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6 PROTECT OUR HOMES AND HILLS;
HILLS FOR EVERYONE;
7 ENDANGERED HABITATS LEAGUE, INC.;
8 CALIFORNIA NATIVE PLANT SOCIETY;
FRIENDS OF HARBORS, BEACHES AND PARKS, INC.

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF ORANGE**

12
13 PROTECT OUR HOMES AND HILLS;
HILLS FOR EVERYONE; ENDANGERED
14 HABITATS LEAGUE, INC.; CALIFORNIA
NATIVE PLANT SOCIETY; FRIENDS OF
15 HARBORS, BEACHES AND PARKS, INC.

16 Petitioners and Plaintiffs,

17 vs.

18
19 COUNTY OF ORANGE; BOARD OF
SUPERVISORS OF COUNTY OF
20 ORANGE; CITY OF YORBA LINDA; CITY
COUNCIL OF THE CITY OF YORBA
21 LINDA; and DOES 1 through 20, inclusive,

22 Respondents and Defendants.

23 YORBA LINDA ESTATES, LLC, an
24 Arizona Limited Liability Company and a
California Limited Liability Corporation; and
25 DOES 21-50,

26 Real Parties in Interest.
27
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Case No.

**PETITION FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF
[CEQA]**

INTRODUCTION

1
2 1. In this action, Petitioners and Plaintiffs Protect Our Homes and Hills, Hills For
3 Everyone, Endangered Habitats League, Inc., California Native Plant Society, and Friends of
4 Harbors, Beaches and Parks, Inc. challenge: Respondents’ and Defendants’, County of Orange
5 and Board of Supervisors of the County of Orange (“County”), approval of the Esperanza Hills
6 Development Project (the “Project”), Project No. PA120037; Certification of a Final
7 Environmental Impact Report (“EIR”) for the Project, State Clearinghouse No. 2012121071;
8 Adoption of a Mitigation Monitoring and Reporting Program, Findings of Fact and a Statement
9 of Overriding Considerations; General Plan Amendment; Zoning Change; and Adoption of the
10 Esperanza Hills Specific Plan.

11 2. Petitioners and Plaintiffs also challenge Respondents’ and Defendants’, City of
12 Yorba Linda and City Council of the City of Yorba Linda (“Yorba Linda”), implementation of
13 the Project: without compliance with the California Environmental Quality Act (“CEQA”), Pub.
14 Res. Code § 21000 et seq.; without compliance with Yorba Linda’s statutory duties as a
15 Responsible Agency under CEQA; without compliance with municipal code and state law
16 procedures for determination of land use issues including (1) Measure B, the Citizens’ Right to
17 Vote Amendment, Yorba Linda Municipal Code § 18.01.020 et seq., (2) California Municipal
18 Park Abandonment Law, Gov. Code § 38501 et seq., and (3) California Law re: Surplus Land,
19 Gov. Code § 54220.

20 3. The Project site is an unincorporated County island consisting of 469
21 undeveloped acres with no access located in the northeast portion of the City of Yorba Linda’s
22 sphere of influence. The Project site has eight sides, four of which are bordered by Chino Hills
23 State Park (“CHSP”) including portions to the north, east, and south. CHSP is ecologically rich
24 and regionally significant. The Project’s location in relation to CHSP and the total acreage of
25 CHSP were not accurately reflected in numerous exhibits or descriptions in the EIR. The
26 Project’s western edge borders the undeveloped but concurrently proposed and in process Cielo
27 Vista development project through which the Project will require access and with which the
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1 Project will share infrastructure. A portion of the Project’s southern edge borders existing
2 residential development in the City of Yorba Linda.

3 4. The Project proposes development of a gated community of 340 single family
4 homes within a Very High Fire Hazard Severity Zone with many documented fires in the past,
5 15 to 16 million cubic yards of grading, and unresolved issues concerning feasibility of access to,
6 and evacuation routes from, the Project. Access to the Project will require an agreement with
7 owners of the adjacent Cielo Vista project and require building a private road on City of Yorba
8 Linda publicly owned open space, previously designated as mitigation for project impacts and a
9 condition of approval for a previously constructed project, and designated as parkland. The
10 access options involving use of city-owned land for road access purposes were denominated as
11 Options 2A and 2B in the Project EIR. According to the EIR, Yorba Linda is a Responsible
12 Agency under either of these access options located on city-owned land.

13 5. The Project site contains three existing, operating oil wells contemplated to
14 continue operations in conjunction with the proposed residential development and at least four
15 abandoned wells of unknown status regarding proper abandonment under Division of Oil, Gas
16 and Geothermal Resources (“DOGGR”) standards. Necessary County Project approvals
17 included a General Plan Amendment from Open Space (5) to Suburban Residential (1B), a Zone
18 change from Agricultural (A1) with an Oil Production Overlay (A1(O)) to Specific Plan (S) and
19 adoption of a Specific Plan as well as Tentative Map approvals.

20 6. The Project is one of four planned development projects in the area known as the
21 “Murdock Property” consisting of several separately owned properties totaling 630 acres. The
22 Murdock Property also includes the Cielo Vista project (also referred to as the Sage project),
23 Bridal Hills LLC (also referred to as the Friend project) and Yorba Linda Land LLC. These four
24 interdependent projects rely on the same infrastructure and access yet their impacts were not
25 analyzed in any comprehensive, unified manner, including their cumulative impacts, in the
26 Project EIR. Cielo Vista, through which the Project must take access, is the subject of a separate
27 EIR and is being processed through the County concurrently with the Project.
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1 7. The Yorba Linda General Plan (“YLGP”) preferred alternative for the Murdock
2 Property is annexation into the City of Yorba Linda and contemplates “one or more specific
3 plans, composed of all eight properties, or compatible combinations of property owners, to
4 provide a comprehensive development and circulation system.”

5 8. On May 22, 2015, by letter to County, the City of Yorba Linda requested that the
6 County require Access Option 2B as part of the Project approvals which would necessitate
7 building the private Project access road through city-owned open space to facilitate the private
8 development. Issues related to the adoption or implementation of this access alternative,
9 including requirements for a public vote and procedural state law requirements relating to
10 parkland abandonment and surplus land were not analyzed in the EIR.

11 9. As the designated “Lead Agency” (Pub. Res. Code § 21067) for the Project,
12 County certified the Final EIR on March 10, 2015, but did not approve the General Plan
13 Amendment, Zone Change and Specific Plan until June 2, 2015. County certified the EIR
14 despite serious concerns expressed by numerous citizens, organizations, including Petitioners,
15 and other responsible and trustee agencies regarding the EIR’s omissions and errors, the
16 Project’s environmental impacts, the adequacy of review of these impacts in the EIR, and the
17 adequacy of mitigation measures or alternatives proposed to reduce or mitigate these impacts and
18 in the absence of evidence of feasibility of the necessary access for the Project.

19 10. As approved, the Project: engages in project segmentation and piecemealing; fails
20 to provide an adequate Project description, baseline or environmental setting identification and
21 analysis; fails to provide adequate impact analysis or feasible avoidance or mitigation for
22 significant impacts in the following areas: aesthetics, biological resources, geology and soils,
23 noise, fire safety, hazards and hazardous materials, land use, recreation, utilities, traffic, climate
24 change, and cumulative impacts. The Project fails to provide a reasonable range of alternatives.
25 The EIR fails to provide adequate responses to public comments. Due to multiple
26 inconsistencies with the Orange County General Plan and the YLGP, the Project violates State
27 Planning and Zoning Law.
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1 11. County did not approve any Tentative Maps necessary for Project
2 implementation, or any access alternative necessary for Project access or evacuation. Instead,
3 hours before the June 2, 2015, Board of Supervisors public hearing on the various Project
4 approvals, the County submitted a proposed amendment to the Specific Plan including an
5 alternate procedure for tentative map approval than that established by the Orange County
6 Subdivision Code and requiring the following conditions or findings: (1) That permission to gain
7 access across land area not owned by the Project Applicant has been secured or it is reasonably
8 assured that access rights will be secured; (2) That permission to allow for off-site grading has
9 been secured or it is reasonably assured that permission will be secured; (3) That a Pre-
10 annexation Agreement between the City of Yorba Linda and the developer has been completed;
11 (4) Finding of consistency with Final Environmental Impact Report 616; (5) Finding of
12 consistency with Final Environmental Impact Report 616 Mitigation Monitoring and Reporting
13 Program; and (6) Findings of consistency with this Specific Plan, the Orange County Zoning
14 Code, the Orange County Subdivisions Code, and applicable laws and regulations.

15 12. The City of Yorba Linda's Municipal Code ("YLMC") contains a voter passed
16 initiative commonly known as "Measure B" which provides for a public vote in the event a
17 "Major Amendment" of any Planning Policy Document is proposed. Major amendments are
18 defined in § 18.01.030 of the YLMC. Subsection 18.01.030 A(6) of the Right to Vote
19 Amendment defines a "Major Amendment" as an amendment which: "Provides for the private
20 development of land owned by a government entity within five years of the date of the approval
21 to develop the land." Access Option 2B, requested as the required alternative by the City,
22 proposes to use land owned by the City of Yorba Linda that is currently zoned open space for a
23 private road to service the proposed private development. This constitutes a "Major
24 Amendment" under Measure B requiring a public vote because Option 2B proposes private
25 development of city-owned land.

26 13. Option 2B is inconsistent with the YLMC's Open Space Zone purposes (YLMC §
27 18.16.400) and allowable uses in Open Space Zones (YLMC § 18.16.430 and Table 18.16-6).
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1 14. The addition of the Option 2B access road will trigger changes to the Circulation
2 Element of the YLGP. Per state law, the Circulation Element must correlate with the remaining
3 elements of the General Plan (Gov. Code § 65302), including the City’s Land Use Element and
4 the two elements cannot be inconsistent. Correlation means closely, systematically or
5 reciprocally related. In order for the Option 2B Project access road to be added to the City’s
6 Circulation Element, both the Circulation and Land Use Elements of the City’s General Plan will
7 need to be amended, constituting a “Major Amendment” of a planning policy document under
8 the YLMC and triggering the requirement for a Measure B public vote.

9 15. According to correspondence submitted by CAA Planning to the Board at the
10 June 2, 2015 meeting, the Board’s March 10, 2015 continuation of the public hearing and
11 consideration of the General Plan Amendment and adoption of the Specific Plan was to provide
12 an opportunity for the Applicant and Yorba Linda to consider the various access options.
13 Moreover, the letter indicates, the Specific Plan Access Configuration Options considered by the
14 Board at the June 2, 2015 meeting “are the result of continued coordination between the County,
15 the applicant and the City of Yorba Linda.”

16 16. By letters to Yorba Linda’s Director of Community Development dated February
17 24, 2015 and April 2, 2015, Petitioner Protect Our Homes and Hills (“POHAH”) identified local
18 and state law compliance procedures necessary for Yorba Linda to allow the use of publicly
19 owned open space for a private access road for the Project through Access Options 2A and 2B.
20 The letters requested that Yorba Linda acknowledge and comply with these procedural
21 requirements. Petitioner received no response to these letters.

22 17. By letter to Yorba Linda’s Director of Community Development and City Clerk
23 dated May 12, 2015, POHAH submitted a detailed list of mitigation measures to reduce the
24 Project’s public safety risks and requested that Yorba Linda condition any approval of the
25 Project on adoption and implementation of these mitigation measures for Fire, Earthquake,
26 Methane and Hydrogen Sulfide hazards and impacts and require disclosures of safety issues to
27 prospective and actual purchasers of Project residences.
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1 18. By letter to Yorba Linda’s Director of Community Development, the Mayor and
2 City Council and City Attorney, dated June 15, 2015, POHAH, submitted a request pursuant to
3 the procedures outlined at Article IX § 18.36.800 et seq. of the Yorba Linda Municipal Code and
4 formally requested a written determination, interpretation, decision or similar action by the
5 Director of Community Development within 30 days concerning the City’s legal and procedural
6 duties in connection with Access Option 2B: (1) Applicability of Measure B, the Citizens’ Right
7 to Vote Amendment, Yorba Linda Municipal Code § 18.01.020 et seq. to the Implementation of
8 Project Access Alternative 3 – Option 2B; (2) Applicability of California Municipal Park
9 Abandonment Law to the Implementation of Project Access Alternative 3 – Option 2B; and (3)
10 Applicability of California Law re: Surplus Land to the Implementation of Project Access
11 Alternative 3 – Option 2B. None of these procedures or the Project’s consistency with them
12 were analyzed in the EIR.

13 19. Yorba Linda is a designated “Responsible Agency” for the Project (CEQA
14 Guidelines § 15381) which must separately and independently review and approve the EIR,
15 Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring Reporting
16 Program and make findings under CEQA, all prior to implementation of the Project.

17 20. To date, Petitioner POHAH has received no response to the request for
18 determination from the Director of Community Development or anyone affiliated with Yorba
19 Linda. Petitioner is informed and believes and thereon alleges that Yorba Linda has taken and
20 continues to take steps to implement the Project without CEQA compliance as indicated in the
21 June 2, 2015 letter by CAA Planning, has engaged in coordinated efforts with the County and the
22 applicant to adopt a particular access alternative, out of the public eye and outside of the CEQA
23 mandated processes. Petitioner is informed and believes and thereon alleges that Yorba Linda
24 has engaged in discussions and/or negotiations with the Project applicant regarding
25 implementation of Access Option 2B and has taken steps to implement the city preferred access
26 alternative and the Project without compliance with CEQA, Yorba Linda’s CEQA duties as a
27 Responsible Agency, the YLMC, California’s Municipal Park Abandonment Law, Gov. Code §
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1 38501 et seq., and California law relating to surplus property, Gov. Code § 54220.

2 21. Yorba Linda is failing to fulfill its duty as a Responsible Agency under CEQA to:
3 (1) reach its own conclusions on whether and how to approve the Project; (2) find feasible
4 alternatives or feasible mitigation measures within its powers that would substantially lessen or
5 avoid any significant effect the Project would have on the environment (CEQA Guidelines §
6 15096(g)(2)); (3) deny the Project in order to avoid direct or indirect environmental effects of
7 that part of the Project which the Responsible Agency would be called on to carry out or approve
8 (CEQA Guidelines § 15042); (4) require preparation of a subsequent/supplemental EIR to fully
9 analyze impacts of Access Option 2B; and (5) make its own findings required under CEQA
10 supported by substantial evidence.

11 22. In approving the Project, County has failed to comply with the California
12 Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*, herein “CEQA”) and California
13 Planning and Zoning Law (Government Code § 65000, *et seq.*). In taking steps to implement the
14 Project without compliance with CEQA requirements relating to responsible agencies, Yorba
15 Linda has violated CEQA. Petitioners therefore petition this Court for a writ of mandate under
16 Code of Civil Procedure §§ 1085 and 1094.5 directing Respondent County to vacate and set
17 aside its approval of the Project and certification of the EIR for the Project and directing
18 Respondent Yorba Linda to cease and desist from any efforts to implement the Project or its
19 components until it has fully complied with CEQA. These claims are based on the following
20 allegations:

21 JURISDICTION AND VENUE

22 23. This Court has jurisdiction over this action pursuant to §§ 1085, 1094.5, and 187
23 of the California Code of Civil Procedure and §§ 21168 and 21168.5 of the Public Resources
24 Code.

25 24. Venue for this action properly lies in the Orange County Superior Court because
26 Respondent County of Orange, Respondent City of Yorba Linda and the proposed site of the
27 Project are located in Orange County.
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THE PARTIES

1
2 25. Petitioner and Plaintiff PROTECT OUR HOMES AND HILLS (“POHAH”) is a
3 volunteer community conservation organization consisting of citizens and taxpayers in Yorba
4 Linda that works to protect and enhance Yorba Linda’s quality of life and public safety and is
5 committed to preserving the regional natural resources. Members offer input into local land use
6 decisions impacting Yorba Linda in an effort to produce better, safer development projects with
7 fewer environmental impacts. POHAH has members throughout Yorba Linda and in the wider
8 Orange County region. POHAH members will be impacted by the Project’s aesthetic, biological
9 resources, geology and soils, noise, fire safety, hazards and hazardous materials, land use,
10 recreation, utilities, traffic, climate change, and cumulative impacts as they use areas surrounding
11 the Project site and impacted by the Project for residential, aesthetic, recreational, wildlife
12 viewing, and educational purposes, and intend to continue these uses. POHAH submitted timely
13 comments on the Project, the Notice of Preparation and the inadequacy of the Draft and Final
14 EIR and testified at hearings on the Project before the County Planning Commission and Board
15 of Supervisors and submitted written comments to Yorba Linda planning staff, the Yorba Linda
16 city attorney and Department of Community Development. POHAH and its members are
17 directly, adversely and irreparably affected, and will continue to be prejudiced by the Project and
18 its components, as described herein, until and unless this Court provides the relief prayed for in
19 this petition. The maintenance and prosecution of this action will confer a substantial benefit on
20 the public by protecting the public from the environmental and other harms alleged herein.

21 26. Petitioner and Plaintiff HILLS FOR EVERYONE (“HFE”) is a community-based
22 organization, formed to protect, preserve, and restore the environmental resources and natural
23 environs of the Puente-Chino Hills and surrounding areas for the enjoyment of current and
24 succeeding generations and to initiate, sponsor, promote, organize, and carry out plans,
25 programs, and activities that will tend to further these ends. HFE has been dedicated to, among
26 other things, protecting the CHSP from projects that could damage the natural, visual, and
27 recreational functions the Park provides. HFE is organized as a California non-profit public
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1 benefit corporation. Members and supporters of HFE include residents and taxpayers of the
2 County and City who will be negatively affected by the Project’s adverse environmental impacts.

3 27. Petitioner and Plaintiff ENDANGERED HABITATS LEAGUE, INC. (“EHL”) is
4 a tax exempt, non-profit, public interest corporation, under California law devoted to sustainable
5 land use planning in Southern California and to the preservation of its native species and the
6 ecosystems upon which these species depend for their survival. EHL submitted timely
7 comments to the County and Yorba Linda regarding the Project and the inadequacies of the EIR.
8 EHL’s core organizational purposes, and the interest of its members—many of whom reside in
9 Orange County—are directly, adversely, and irreparably affected, and will continue to be
10 prejudiced by the Project and its components, as described herein, until and unless this Court
11 provides the relief prayed for in this petition. The maintenance and prosecution of this action
12 will confer a substantial benefit on the public by protecting the public from the environmental
13 and other harms alleged herein.

14 28. Petitioner and Plaintiff CALIFORNIA NATIVE PLANT SOCIETY (“CNPS”) is
15 a California non-profit 501(c)(3) corporation. CNPS is a statewide organization, formed in 1965,
16 of nearly 10,000 members, both professional botanists and laypersons, dedicated to the
17 preservation of California’s rich native botanical heritage. CNPS is particularly concerned with
18 the conservation of California’s rare and endemic plant species and threatened plant
19 communities. CNPS, through its Orange County Chapter, has provided oral and written
20 comments during the administrative proceedings leading to approval of the Project. The interests
21 that CNPS seeks to further in this action are within the purposes and goals of the corporation,
22 and CNPS and its members have a direct and beneficial interest in Respondents’ compliance
23 with CEQA, the CEQA Guidelines, State Planning and Zoning Law, the General Plans of
24 Orange County and of the City of Yorba Linda. These interests will be directly and adversely
25 affected by the Project, which violates provisions of law as set forth in this Petition and which
26 would cause irreversible harm to the natural environment and habitat protections. The
27 maintenance and prosecution of this action will confer a substantial benefit on the public by
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1 protecting the public from the environmental and other harms alleged herein.

2 29. Petitioner and Plaintiff FRIENDS OF HARBORS, BEACHES AND PARKS,
3 INC. (“FHBP”), is a California non-profit, 501(c)(3) corporation whose mission is to promote,
4 protect, and enhance the harbors, beaches, parks, trails, open spaces, natural preserves, and
5 historic sites in Orange County. FHBP meets its mission through a coalition of 85 conservation
6 and community organizations in Orange County. FHBP and its coalition members work to
7 ensure the protection of important natural lands, provide educational opportunities at recreational
8 facilities, and enhance existing natural areas. FHBP has provided written comments during the
9 administrative proceedings leading to approval of the Project. The interests that FHBP seeks to
10 further in this action are within the purposes and goals of the corporation, and FHBP and its
11 members have a direct and beneficial interest in Respondents’ compliance with CEQA, the
12 CEQA Guidelines, State Planning and Zoning Law, the General Plans of Orange County and of
13 the City of Yorba Linda. These interests will be directly and adversely affected by the Project,
14 which violates provisions of law as set forth in this Petition and which would cause irreversible
15 harm to the natural environment and habitat protections. The maintenance and prosecution of
16 this action will confer a substantial benefit on the public by protecting the public from the
17 environmental and other harms alleged herein.

18 30. Respondent COUNTY OF ORANGE (“County”) is a local governmental agency
19 and political subdivision of the State of California charged with the authority to regulate and
20 administer land use activities within its boundaries, subject at all times to the obligations and
21 limitations of all applicable state, federal, and other laws, including CEQA, the CEQA
22 Guidelines and California Planning and Zoning Law. As the CEQA Lead Agency for the
23 Project, County certified the EIR and approved the Project.

24 31. Respondent BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE
25 (“Board”) is the legislative body and the highest administrative body of County.

26 32. Respondent CITY OF YORBA LINDA (“Yorba Linda”) is a California
27 Municipal Corporation, a local governmental agency and political subdivision of the State of
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1 California charged with the authority to regulate and administer land use activities within its
2 boundaries, subject at all times to the obligations and limitations of all applicable state, federal,
3 and local laws, including CEQA, the CEQA Guidelines, California Planning and Zoning Law,
4 Park Abandonment Law, Surplus Property Law, and the Yorba Linda Municipal Code.

5 Petitioners are informed and believe and thereon allege that Yorba Linda has taken steps to
6 implement the Project without CEQA compliance or compliance with applicable state and local
7 law.

8 33. Respondent CITY COUNCIL OF THE CITY OF YORBA LINDA (“City
9 Council”) is the legislative body and the highest administrative body of Yorba Linda.

10 34. Real Party in Interest YORBA LINDA ESTATES, LLC (“Applicant”) is an
11 Arizona Limited Liability Company and a California Limited Liability Corporation and the
12 applicant for the entitlements that constitute the Project. Based on the status of the Applicant as
13 the only identified applicant and owner for the Project, and on Petitioners’ information and
14 belief, this party adequately represents the interests of any and all other non-joined parties in the
15 Project.

16 35. Petitioners are currently unaware of the true names and capacities of Respondents,
17 Does 1 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1
18 through 20, inclusive, are agents of County, Yorba Linda, state, or federal government who are
19 responsible in some manner for the conduct described in this petition, or other persons or entities
20 presently unknown to Petitioners who claim some legal or equitable interest in the Project that is
21 the subject of this action. Petitioners will amend this petition to show the true names and
22 capacities of Does 1 through 20 when such names and capacities become known.

23 36. Petitioners are currently unaware of the true names and capacities of Real Parties
24 in Interest, Does 21 through 50, inclusive. Does 21 through 50, inclusive, are persons or entities
25 presently unknown to Petitioners who claim some legal or equitable interest in the Project that is
26 the subject of this action. Petitioners will amend this petition to show the true names and
27 capacities of Does 21 through 50 when such names and capacities become known.
28

1 GENERAL ALLEGATIONS

2 37. The Project proposes construction of 340 single-family homes and associated
3 infrastructure on 468.9 acres in unincorporated Orange County within the Yorba Linda sphere of
4 influence. The Project will permanently impact a minimum of 331 acres of natural vegetation
5 communities, not including fuel modification zones that extend beyond the grading limits. The
6 entire Project site was burned in the 2008 Freeway Complex Fire.

7 38. On December 2, 2013, County issued a Draft EIR for the Project with a public
8 comment period ending February 3, 2014. Previously, on November 7, 2013, County issued a
9 separate Draft EIR for the immediately adjacent Cielo Vista development project with an initial
10 public comment period ending January 7, 2014 and later extended to January 22, 2014.

11 39. The Project must take access through Cielo Vista and the two projects share
12 utility and road infrastructure and have similar significant environmental impacts. Petitioners are
13 informed and believe and thereon allege that no agreement exists between the Project Applicant
14 and the Cielo Vista applicant to permit Project access through Cielo Vista. Petitioners are further
15 informed and believe and thereon allege that the Project's proposed access routes, changes in
16 topography, and fuel modification zones conflict with the footprint of the Cielo Vista project.
17 The separate EIRs for the two concurrently processed, adjacent projects contain conflicting
18 information and effectively minimize the two projects' combined and cumulative impacts.

19 40. Following circulation of the Draft EIR for the Project, other agencies and
20 members of the public, including Petitioners, provided comments on the Draft EIR. These
21 comments contained, among other things, objections to the EIR's: segmentation and
22 "piecemealing" of the Project and the Cielo Vista project, failure to properly identify the
23 Project's environmental setting, particularly in relation to CHSP, incomplete and inadequate
24 Project description, inadequate analysis of the Project's cumulative impacts, and inadequate
25 analysis of impacts to, and mitigation or avoidance of impacts to biological resources, geology
26 and soils, land use plan consistency, greenhouse gas emissions, fire safety, hazards and
27 hazardous materials, noise, recreation, water resources, traffic, and aesthetics. Public comments
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1 also challenged the scope of alternatives and alternatives analysis.

2 41. At its meeting of January 14, 2015, the County Planning Commission
3 recommended approval of the Project.

4 42. On March 10, 2015, the Board certified the Final EIR, adopted findings of fact,
5 adopted a Statement of Overriding Considerations due to significant unmitigated greenhouse gas
6 emissions, noise and traffic impacts and adopted a Mitigation Monitoring and Reporting
7 Program. The Board did not approve the various components of Project approval and
8 implementation including a General Plan Amendment, Zone Change, Specific Plan or Tentative
9 Map.

10 43. On June 2, 2015, the Board reopened the public hearing on the Project and
11 separately approved the General Plan Amendment, Zone Change, and Specific Plan. County did
12 not approve any Tentative Map necessary for Project implementation, or any access alternative
13 necessary for Project access or evacuation.

14 44. On June 3, 2015, County filed a Notice of Determination for the Project.

15 45. To date, Yorba Linda, as a Responsible Agency, has not noticed or conducted any
16 public hearings in connection with its review and approval of the EIR. Petitioner is informed
17 and believes and thereon alleges that Yorba Linda has taken action to implement the Project
18 through coordination with the County and the Project applicant concerning Project access
19 through City-owned open space without proper CEQA review, compliance with its statutory
20 duties as a Responsible Agency, and without compliance with relevant state and local law.

21 46. As a result of Respondent County's approvals and Respondent Yorba Linda's
22 implementation of the Project without CEQA compliance, Petitioners will suffer great and
23 irreparable environmental harm as described herein. Petitioners have no adequate remedy at law
24 for this irreparable harm.

25 47. Petitioners have exhausted all administrative remedies by submitting written
26 comments to County and Yorba Linda prior to Project approval, requesting compliance with
27 CEQA and the completion of full and adequate environmental review and compliance with all
28

1 relevant state and local laws. All issues raised in this petition were raised in a timely manner
2 before Respondents by Petitioners, other members of the public, or public agencies.

3 48. Petitioners have complied with Public Resources Code § 21167.5 by prior service
4 of a notice upon County and Yorba Linda indicating their intent to file this Petition. Proofs of
5 Service of this notification, with the notifications attached, are attached as Exhibits A and B.

6 49. This petition is timely filed in accordance with Public Resources Code § 21167
7 and CEQA Guidelines § 15112.

8 50. Respondents have abused their discretion and failed to proceed in the manner
9 required by law in the following ways:

10 **FIRST CAUSE OF ACTION**
11 **Violation of CEQA (Public Resources Code § 21000 et seq.)**
12 **(By All Petitioners Against Respondents County and Board)**

13 51. Petitioners hereby incorporate by reference each and every allegation set forth
14 above.

15 52. CEQA requires that a Lead Agency must prepare a legally adequate EIR prior to
16 approving any discretionary project that may have a significant environmental effect. The EIR
17 must fully disclose and analyze the project's potentially significant environmental effects. The
18 Lead Agency is also required pursuant to CEQA to consider mitigation measures and alternatives
19 that would reduce or avoid the project's significant environmental effects, to adopt all feasible
20 mitigation measures and/or alternatives, and to determine that proposed mitigation measures will
21 or will not be effective in avoiding or substantially lessening the project's significant
22 environmental impacts.

23 53. CEQA requires that an EIR must provide a complete and accurate description of
24 both the project and the project's environmental setting.

25 54. The EIR must provide sufficient environmental analysis such that decision-
26 makers can intelligently consider environmental consequences when acting on proposed projects.
27 Mitigation measures adopted for a project's significant environmental effects must be specific
28 and enforceable.

1 55. In approving the Project and certifying the EIR, CEQA requires that the Lead
2 Agency must find either (1) that the project’s significant environmental effects have been
3 mitigated or avoided or (2) that the unmitigated impacts are outweighed by specific overriding
4 economic, legal, social, technological, or other benefits of the project. The Lead Agency may
5 reach the latter conclusion and adopt a Statement of Overriding Considerations only if it finds
6 that there are no feasible mitigation measures or alternatives to avoid or substantially lessen the
7 remaining significant environmental effects of the project.

8 56. As Lead Agency, County has a clear, present, and mandatory duty to analyze and
9 adopt all feasible mitigation measures as well as consider a reasonable range of alternatives and
10 adopt any feasible alternative that would substantially lessen the significant environmental
11 effects of the Project.

12 57. County violated CEQA by certifying an EIR for the Project that is inadequate and
13 fails to comply with CEQA for the following reasons, among others:

14 **The EIR’s Project Description, Environmental Setting and Baseline Components**
15 **Are Inadequate and Fail to Permit Meaningful Public Review of the Project.**

16 58. “An accurate, stable and finite project description is the sine qua non of an
17 informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County*
18 *of Stanislaus*, 27 Cal. App. 4th 713, 730 (1994) (quoting *County of Inyo v. City of Los Angeles*,
19 71 Cal. App. 3d 185, 193 (1977)). The use of a “truncated project concept” violates CEQA and
20 mandates the conclusion that the Lead Agency did not proceed in the manner required by law.
21 *San Joaquin Raptor*, 27 Cal. App. 4th at 729–30. “An accurate project description is necessary
22 for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* at
23 730 (citation omitted). An inaccurate or incomplete project description renders the analysis of
24 significant environmental impacts inherently unreliable.

25 59. The Project EIR omits material, critical information concerning both the location,
26 adjacency, and total acreage of CHSP in relation to the Project. This failure is comprehensive
27 and pervasive throughout the entirety of the EIR and its exhibits. The Draft EIR understated the
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1 size of CHSP by 2,330 acres, completely omitted this additional acreage from numerous Draft
2 EIR exhibits and the project impact analysis, and failed to accurately identify the location of
3 CHSP as immediately adjacent to all or portions of the northern, eastern and southern sides of
4 the Project site. This omission renders the EIR’s analysis of the project’s edge effects, wildland-
5 urban interface, and project impacts to aesthetics, biology, and hazards inadequate. Although
6 Petitioners brought this omission to the County’s attention and even provided the digital
7 mapping data to allow for the correction, the Final EIR still fails to adequately correct these
8 analytical and informational omissions.

9 60. The EIR fails to adequately describe and analyze concurrently processed or
10 reasonably probable components of the proposed Project, including the adjacent Cielo Vista,
11 Bridal Hills, and Yorba Linda Land developments.

12 61. The EIR uses an improper baseline for the Project, improperly using the proposed
13 amended land use designations instead of existing, undeveloped Project site conditions.

14 62. The EIR’s treatment and identification of Discretionary Approvals is incomplete
15 and inadequate and fails to identify or analyze all discretionary project approvals including but
16 not limited to Local Agency Formation Commission (“LAFCO”) approval or City of Yorba
17 Linda approvals.

18 **The EIR Engages in Impermissible Project Segmentation and Piecemealing.**

19 63. The EIR impact analysis in isolation from the Cielo Vista, Bridal Hills, and Yorba
20 Linda Land developments constitutes improper segmentation of environmental review under
21 CEQA.

22 64. Cielo Vista is proposed directly west and partly south of, and adjacent to, the
23 Project. Cielo Vista proposes the construction of 112 dwelling units and major grading
24 activities on an 84-acre parcel. Cielo Vista and the Project will share water and sewer facilities,
25 and at least one of the Project access routes to the Project site will traverse Cielo Vista.

26 65. CEQA prohibits piecemeal review of two developments that are truly a single
27 project. The statute defines a “project” as “the whole of an action, which has a potential for
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1 resulting in either a direct physical change” or “a reasonably foreseeable indirect change in the
2 environment.” CEQA Guidelines § 15378(a); *see also* CEQA Guidelines § 15378(c) (term
3 “project” means the whole of the “activity which is being approved”). An agency must take an
4 expansive view of any particular project as it conducts the environmental review for that project.

5 66. An “EIR must include an analysis of the environmental effects of future
6 expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project;
7 and (2) the future expansion or action will be significant in that it will likely change the scope or
8 nature of the initial project or its environmental effect.” *Laurel Heights Improvement Assn. v.*
9 *Regents of the Univ. of California* (1988) 47 Cal. 3d 376, 394–96. The Project and Cielo Vista
10 will share water and sewer infrastructure. Access to the Project site may be provided by access
11 corridors to be constructed as part of the Cielo Vista project. The Yorba Linda Water District has
12 advised representatives of both development projects that water and sewer services and facilities
13 must be planned and designed together. Construction of the Cielo Vista access corridors and
14 utility connections are the first steps toward development of the Project.

15 67. Analysis of environmental effects must occur at the earliest discretionary
16 approval, even if later approvals will take place. *See, e.g., Bozung v. Local Agency Formation*
17 *Comm.*, 13 Cal. 3d 263, 282 (1975). The EIR fails to comprehensively analyze the
18 environmental impacts associated with Cielo Vista combined with those of the Project.

19 68. The Orange County Local Agency Formation Commission (“LAFCO”) also
20 requested that the County prepare a combined analysis of the environmental impacts of Cielo
21 Vista and the Project. The County failed to do so.

22 **The EIR Fails to Adequately Identify and Analyze the Magnitude and Significance**
23 **of the Project’s Impacts When Viewed in Conjunction with Cielo Vista.**

24 69. By segmenting environmental review of Cielo Vista and the Project, the EIR fails
25 to accurately and adequately identify and analyze the magnitude and significance of the Project’s
26 environmental impacts. Impacts caused by the Project that are deemed less than significant in
27 the EIR would be significant when combined with the impacts of Cielo Vista.
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1 70. The EIR’s claims that categories of impacts are less than significant for the
2 Project and fails to inform the public and the decision-makers of the true environmental impacts
3 of the Project in its entirety when analyzed in conjunction with Cielo Vista. Only a single,
4 comprehensively prepared EIR would provide the complete and adequate environmental review
5 that CEQA requires.

6 **The EIR Fails to Analyze the Bridal Hills and Yorba Linda Land Developments as**
7 **Reasonably Foreseeable Consequences of the Project.**

8 71. Development planned for the Bridal Hills, LLC parcel and the Yorba Linda Land,
9 LLC parcel are also reasonably foreseeable consequences of the Project. These two parcels—
10 located north and west of the Project site—are currently undeveloped, but significant
11 development activity is planned for at least one of these areas. The EIR indicates the proposed
12 street design for the Project provides access to both the Bridal Hills and Yorba Linda Land
13 parcels and that this access is designed “to accommodate future development of these
14 properties.”

15 72. Development of these two parcels will utilize infrastructure improvements, such
16 as water treatment and delivery facilities, planned for Cielo Vista and the Project. The EIR
17 indicates that water storage capacity of the Project infrastructure can be increased to
18 accommodate the adjacent property.

19 73. The EIR indicates that the Bridal Hills, LLC parcel “is a reasonably foreseeable
20 development.” For certain categories of impacts, such as air quality and traffic, the EIR includes
21 the Bridal Hills parcel for purposes of analysis but critically omits the Bridal Hills parcel when
22 evaluating other impacts, such as aesthetics and biological resources.

23 74. The environmental effects of all of these developments, along with those of the
24 Project, should be collectively evaluated in a single EIR.

25 **The EIR Fails to Accurately Analyze the Project’s Aesthetic Impacts.**

26 75. The EIR fails to adequately analyze the Project’s significant aesthetics impacts
27 and its mitigation conclusions based on inadequate impact analysis are unsupported.
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1 76. The EIR fails to acknowledge that the Project is inconsistent with policies of the
2 Orange County General Plan (“OCGP”), the City of Yorba Linda General Plan (“YLGP”) and
3 Zoning Code, and the CHSP General Plan regarding aesthetics. These plan inconsistencies
4 constitute significant and unavoidable impacts.

5 **The EIR Fails to Adequately Analyze Views From Chino Hills State Park.**

6 77. The EIR indicates construction of the Project will significantly change the
7 aesthetic character of the area by permanently altering portions of the site through landform
8 modification and building. Grading for the proposed project involves the movement of 15-16
9 million cubic yards of soil and consists of cutting, filling, and recontouring the natural terrain to
10 create new roadways, residential lots, park areas, and landscaping. The EIR indicates that
11 “[e]xposed grading surfaces, construction debris, construction equipment, truck traffic, and
12 stockpiled materials may adversely impact views of the site on a temporary basis.” The Project
13 site can be viewed from multiple locations within CHSP.

14 78. View impacts are considered significant if the Project would (1) have a substantial
15 adverse effect on a scenic vista; (2) substantially degrade the existing visual character or quality
16 of the site and its surroundings; or (3) create a new source of substantial light or glare which
17 would adversely affect day or nighttime views in the area.

18 79. There is clear potential for the Project’s aesthetic impacts to views from CHSP to
19 exceed these thresholds. CEQA demands a thorough investigation and analysis of these
20 environmental impacts yet the EIR fails to adequately analyze view impacts from CHSP.

21 80. The EIR provides and analyzes visual simulations to depict what the Project will
22 look like when viewed from 12 off-site locations. The EIR indicates these sites were chosen from
23 near and distant viewpoints to represent the change in the visual quality of the site.

24 81. The EIR only includes one view—View 12—from CHSP and concludes from this
25 single vantage point that aesthetic impacts related to CHSP will be less than significant despite
26 the fact that half of the Project borders the Park.
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1 82. The EIR does not provide substantial evidence to support its aesthetic impact
2 conclusions. View 12 demonstrates that the Project will substantially degrade the visual
3 character and quality of the site. The Project dominates the middle ground of View 12, and
4 provides the only sizeable man-made structures from that view. The Project’s manufactured
5 landscape would confront visitors to San Juan Hill in CHSP that arrive seeking the natural
6 landforms characteristic of CHSP. This is substantial degradation and a significant impact.

7 83. The Project will be visible from at least three sites in CHSP including from the
8 South Ridge Trail, the Old Edison Trail, and the San Juan Hill lookout. The CHSP General Plan
9 includes a guideline to discourage ridgeline developments that affect views from the Park and
10 encourages cooperation with developers to protect views to the extent feasible.

11 84. The EIR must evaluate aesthetic impacts to additional viewpoints from CHSP,
12 including impacts to nighttime views. The EIR fails to analyze the full range of aesthetic impacts
13 to CHSP and therefore does not provide the substantial evidence necessary to claim that
14 aesthetics, light, and glare impacts are less than significant as they relate to views from CHSP.

15 **The EIR Fails to Adequately Analyze the Project’s Consistency with the Orange**
16 **County General Plan, Yorba Linda General Plan, Yorba Linda Zoning Code, and CHSP**
17 **General Plan.**

18 85. The EIR’s analysis of the Project’s inconsistencies with the Goals, Objectives,
19 and Policies of the OCGP, YLGP, Yorba Linda Zoning Code, and CHSP General Plan regarding
20 aesthetic impacts is incomplete and inadequate.

21 86. The Project is inconsistent with the City of Yorba Linda Zoning Code Chapter
22 18.30 - Hillside Development, Grading, and Fire Protection. Views of hillside sites, such as the
23 Project site, from “off-site locations should be given careful consideration.”

24 87. The major site design principles of Chapter 18.30 of the City’s zoning ordinance
25 are to consider views from off-site locations, preserve a more natural slope appearance, partially
26 screen buildings on ridgelines with landscaping, preserve trees and other vegetation, and
27 preserve the natural hillsides and ridgelines.

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1 88. Within the viewscape of CHSP for any proposed residential development that is
2 determined to be viewed from any point within CHSP, the grading and landscaping plans shall
3 include . . . “specific measures, including height limits, setbacks, landscaping, berms, and/or
4 other measures which will assure that any structure built on the lot will not be viewed from
5 CHSP or otherwise be screened to the extent feasible.” Yorba Linda Zoning Code §
6 18.30.040.E.

7 89. The EIR’s analysis of the Project’s consistency with the Yorba Linda Zoning
8 Code is inadequate to support its conclusions due to its failure to evaluate aesthetics impacts to
9 additional viewpoints from CHSP.

10 90. The EIR fails to adequately analyze the Project’s inconsistency with the
11 Aesthetics section of the CHSP General Plan, which establishes a goal to “[p]rotect scenic
12 features from man-made intrusions and preserve the visitor’s experience of the natural landscape
13 by minimizing adverse impacts to aesthetic resources.” To implement this goal the General Plan
14 includes the following guideline: “Ridgeline and knoll developments outside the park that
15 adversely affect significant views will be discouraged. The Department will work with park
16 neighbors and local government to review and plan adjacent developments in a manner that
17 protects views.” The CHSP General Plan also includes guidelines to minimize the intrusion of
18 artificial light. The Project does not “preserve the visitor’s experience of the natural landscape
19 by minimizing adverse impacts to aesthetic resources,” as required by the CHSP General Plan.

20 91. In the absence of adequate analyses of additional views from the Park, including
21 night views, the EIR’s consistency conclusions are not supported by substantial evidence.

22 92. The Project is inconsistent with OCGP policies, including but not limited to:
23 Land Use Element Policy 8 -- “[t]o guide development so that the quality of the physical
24 environment is enhanced;” and Resources Element, Natural Resources Policy 5 -- “[t]o protect
25 the unique variety of significant landforms in Orange County through environmental review
26 procedures and community and corridor planning activities.”
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1 93. The Project is inconsistent with the following YLGP goals and policies related to
2 aesthetics and light and glare, including but not limited to:

3 Land Use Element Goal 3: Compatible relationships between land uses provided in the
4 community.

5 Land Use Element Policy 3.4: Provide land use compatibility through appropriate community
6 design and development policies.

7 Land Use Element Goal 9: Preservation and enhancement of the natural setting of the City.

8 Land Use Element Policy 9.2: Protect the scenic and visual qualities of hillside areas and
9 ridgelines.

10 Land Use Element Policy 9.3: Ensure that land uses within designated and proposed scenic
11 corridors are compatible with scenic enhancement and preservation.

12 94. The Project’s aesthetic impacts make it incompatible with the adjacent CHSP.
13 The EIR’s failure to conduct adequate impact analysis of additional views from the Park,
14 including night views, renders its consistency conclusions unsupported by substantial evidence.

15 **The EIR Fails to Adequately Analyze and Mitigate Air Quality Impacts.**

16 95. The EIR fails to adequately analyze Project air quality impacts and fugitive dust
17 emissions, particularly cumulative air quality impacts resulting from the combined effects of the
18 Project and Cielo Vista. The EIR fails to analyze compliance with Southern California Air
19 Quality Management District rules from the combined impacts of these two projects.

20 **The EIR Fails to Adequately Analyze and Mitigate Impacts to Biological Resources.**

21 96. The Project site is home to a rich diversity of plant and animal life. Biologists
22 have observed 167 native plant species and 82 native animal species on the Project site.

23 97. The EIR indicates the Project site is home to a total of 15 special status species
24 and two federally listed species, least Bell’s vireo and Braunton’s milkvetch, and designated
25 critical habitat for the threatened California gnatcatcher. Other special status species may occur
26 on the site, but the EIR failed to conduct focused surveys for these species.

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1 98. The Project will permanently impact a minimum of 331 acres of natural
2 vegetation communities, but mitigation is limited to a 5.27 acre area in Blue Mud Canyon which
3 is also subject to further degradation and will be cleared of native vegetation for fuel breaks.
4 Project impacts grossly exceed the size of the proposed mitigation area and do not mitigate
5 significant impacts to native vegetation and wildlife resources.

6 **The EIR Fails to Adequately Analyze and Mitigate Impacts to Plants.**

7 99. The Project site is home to five sensitive plant species indicating the presence of
8 high quality natural vegetation communities.

9 100. The EIR fails to provide adequate and appropriate mitigation for Project impacts
10 to these species proposing replanting three of five sensitive plant species in the limited remaining
11 open space on the Project site. This does not offset Project impacts to these species.

12 101. The EIR fails to properly analyze and mitigate impacts to California black walnut
13 or to the California walnut woodland vegetation community. The EIR fails to include specific
14 success criteria and monitoring for Project impacts to this species.

15 102. The EIR fails to properly analyze and mitigate impacts to Braunton's milkvetch, a
16 federally endangered plant species, and the intermediate mariposa lily. The EIR fails to analyze
17 suitable locations, soils, aspect, slope etc. for translocation mitigation and fails to replace
18 impacted plants at a 1:1 ratio. The transplant/translocation program is of doubtful efficacy.
19 According to the United States Fish and Wildlife Service ("USFWS"), such efforts have
20 historically been unsuccessful for these species.

21 103. On-site avoidance, conservation, management, and minimization of impacts are
22 not adequately evaluated.

23 104. The EIR fails to identify, analyze or mitigate impacts to native grasslands.

24 105. The EIR fails to provide mitigation for significant Project impacts to vegetation
25 communities which support a wide variety of sensitive plants and wildlife, directly adjacent to
26 CHSP and to wildlife species present on-site or using the site.

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1 **The EIR Fails to Adequately Analyze and Mitigate Impacts to Wildlife.**

2 106. The EIR fails to provide mitigation for significant Project impacts to California
3 gnatcatcher critical habitat. The EIR’s conclusion regarding the necessity of mitigation for
4 impacts to this habitat are not supported by substantial evidence. According to USFWS,
5 gnatcatchers are likely to disperse through the Project site and forage on this site and have been
6 observed a 0.25 mile from the Project site as well as within 1.5 miles east and west of the Project
7 site.

8 107. The presence of Golden Eagles foraging on-site and nests on directly adjacent
9 properties are documented, but the EIR fails to address Project impacts to this species or
10 cumulative impacts from this Project and other reasonably foreseeable projects. The EIR fails to
11 provide mitigation for Project and cumulative impacts to Golden Eagles.

12 108. Eight other raptor species have been observed foraging on the Project site
13 including four special status species (Cooper’s Hawk, Northern Harrier, Peregrine Falcon and
14 Sharp-Shinned Hawk). No focused raptor surveys were conducted in connection with the EIR.
15 In the absence of focused surveys, the EIR’s significance conclusions regarding these raptors are
16 unsupported by substantial evidence. Impacts must be properly identified and analyzed and
17 appropriate mitigation, avoidance or conservation of on-site habitat provided.

18 109. The Project will permanently impact live-in habitat, nursery areas, and local
19 movement paths for large mammals, such as bobcat, cougar, coyote, grey fox, and mule deer
20 documented as inhabiting the Project site. The Project will thereby contribute to degradation of
21 surrounding habitat. The EIR fails to provide analysis of these impacts to resident large
22 mammals or mitigation or avoidance for such impacts.

23 110. The EIR fails to adequately analyze and mitigate impacts from implementation of
24 the Project fuel modification plan including permanent impacts and reduction of natural
25 vegetation communities and their ability to support native wildlife.

26 **The EIR Improperly Defers Formulation of Biological Resource Impact Mitigation**
27 **Measures.**

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1 111. An EIR is inadequate if “the success or failure of mitigation efforts...may largely
2 depend upon management plans that have not yet been formulated, and have not been subject to
3 analysis and review within the EIR.” *San Joaquin Raptor Rescue Center v. County of Merced*
4 (2007) 149 Cal.App.4th 645, 670.

5 112. The EIR impermissibly defers formulation of a number of mitigation measures
6 related to biological resource impacts. Mitigation measures Bio-1 through Bio-4, Bio-6 through
7 Bio-7, and Bio-10 all defer formulation of revegetation and restoration plans, a Habitat
8 Mitigation and Monitoring Program (“HMMP”) and a Resident Awareness Plan to the future,
9 after project approval and after any opportunity for public review and comment on these
10 proposed plans. The mitigation measures do not include any specific performance standards for
11 the unformulated plans. As such, they are inadequate under CEQA.

12 **The EIR Fails to Accurately Analyze the Project’s Geology and Soils Impacts.**

13 113. The EIR fails to adequately analyze the Project’s significant geologic hazards.
14 The EIR’s proposed mitigation measures are vague and incapable of reducing these significant
15 impacts to a less than significant level. The EIR fails to acknowledge that the Project is
16 inconsistent with policies of the OCGP and the YLGP and City and State maps regarding
17 geologic hazards. These plan inconsistencies constitute significant and unavoidable impacts.

18 **The EIR Fails to Adequately Analyze Geologic Safety Hazards Related to Ground**
19 **Shaking.**

20 114. The active Whittier Fault crosses the southerly portion of the Project site. The
21 EIR explains that geologic hazards to the Project would be significant if the Project would
22 expose people or structures to potential substantial adverse effects, including the risk of loss,
23 injury or death, involving fault rupture, strong seismic ground shaking, seismic-related ground
24 failure, including liquefaction, and landslides. The hazards associated with the Whittier Fault
25 plainly exceed this threshold.

26 115. A major earthquake along the segment of the Whittier Fault crossing the Project
27 site could subject the site to severe ground shaking involving peak ground accelerations in excess
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1 of 1.8 g (“G force”) as well as earthquake induced landslides. Shaking of such an extreme nature
2 can cause even well-built structures to be destroyed, to collapse, or to be moderately to severely
3 damaged or shifted off their foundations. Such shaking could also cause localized slope
4 deformation and/or trigger slope failures in graded and natural slope areas, potentially leading to
5 structural damage itself. The integrity of side-hill fills and retaining walls could also be
6 impacted in the event of any related slope deformation. The EIR concedes that impacts due to
7 strong ground shaking could be significant.

8 116. The State of California Seismic Hazard Zones map demonstrates that nearly the
9 entire Project site is located in a seismic hazard zone. The EIR fails to adequately analyze and
10 mitigate or avoid such demonstrated seismic hazards.

11 117. Yorba Linda’s Public Safety Map identifies seven areas of landslide activity on
12 the Project site; the Project EIR identifies only two areas of landslide activity. The unidentified
13 and unanalyzed landslide areas are located where the Project proposes to build 125 residences.

14 118. The EIR’s identification and analysis of landslides impacting and underlying the
15 Project residences is incomplete and inadequate, and the EIR fails to provide mitigation or
16 avoidance strategies for such impacts.

17 119. Ground surface rupture could occur in the area where active strands of the
18 Whittier Fault are present. Surface rupture due to a nearby earthquake on the Whittier Fault
19 could damage structures or facilities. The EIR concedes that active secondary faults, or splay
20 faults, exist within the Project site north of the main Whittier Fault trace.

21 120. The EIR explains that the Whittier Fault creates a serious potential hazard for the
22 Project. CEQA thus demands a thorough analysis of these significant environmental impacts;
23 the EIR fails to conduct adequate analysis and defers such analysis, including determining the
24 location of secondary faults crucial to thoroughly disclosing and mitigating the Project’s seismic
25 vulnerabilities and impacts. Neither the EIR nor its appendices provide a map demonstrating the
26 location of active secondary faults. The EIR fails to provide sufficient information to evaluate
27 these active fault traces.

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1 121. The EIR fails to analyze the full range of geologic hazards facing the Project or to
2 support its conclusion that risks related to surface ruptures are not significant. Without this
3 information, the County has also failed to provide substantial evidence to support its conclusions
4 that risks from surface rupture to non-habitable improvements within the seismic setback zone
5 have been reduced to less than significant.

6 **The EIR Does Not Adequately Mitigate the Project’s Geologic Safety Hazards.**

7 122. The EIR proposes a series of mitigation measures to reduce geologic hazards to
8 less than significance, but fails to provide substantial evidence to support this conclusion.

9 123. Regarding risks from fault rupture, the EIR establishes a “fault hazard setback
10 zone” that is “based on the mapped locations of principal and secondary branch faults.” The EIR
11 proposes Mitigation Measure Geo-11, which requires that “the Project Applicant and the County
12 shall ensure that no lots are designed with habitable structures within the fault hazard setback
13 zone.” The EIR provides no information on the location of secondary faults. The mitigation
14 measure is meaningless, and the EIR’s conclusion that it will reduce impacts to a less than
15 significant level is unsupported.

16 124. The EIR admits that earthquake-induced ground shaking on the Whittier Fault
17 could result in damage to the Project, but improperly avoids analysis of these impacts claiming
18 “[t]here is no feasible way to avoid earth shaking from seismic events,” and that “the seismic
19 shaking expected to occur at the Project Site is not significantly greater than the surrounding
20 areas or other hillside areas in southern California.” The EIR provides no evidence that seismic
21 shaking at the Project site is not significantly greater than surrounding areas or other hillside
22 areas. The available evidence suggests otherwise. The Whittier Fault, which the EIR calls “one
23 of the most prominent actively seismic hazards within southern California,” runs directly across
24 the Project site and all Project access and evacuation routes.

25 125. The EIR nevertheless contends that “[a]dherence to the current Uniform Building
26 Code and Mitigation Measure Geo-11 will result in earthquake resistance as stated above, and
27 will reduce impacts from ground shaking to the maximum extent practicable.” As discussed
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1 above, until the active secondary faults in the Project area have been convincingly mapped,
2 Mitigation Measure Geo-11, which prohibits habitable structures within the fault hazard setback
3 zone, does not ensure that geologic hazards are less than significant.

4 126. Reducing impacts “to the maximum extent practicable” is not a substitute for
5 reducing impacts to a less than significant level, as CEQA requires. Compliance with applicable
6 building codes, alone, is not sufficient to reduce seismic ground shaking impacts to less than
7 significant levels. These measures cannot correct for the Project’s unwise and uninformed
8 placement of residential buildings in an area of significant seismic hazards. If, as the EIR
9 essentially admits, the available mitigation cannot reduce the Project’s impacts to a less than
10 significant level, then the EIR must conclude that the impact is significant and unavoidable.

11 127. The Project would increase the potential for structural damage and expose
12 Project residents to substantial adverse effects, including the risk of loss, injury, or death from
13 seismic ground shaking and fault rupture. The EIR has not provided substantial evidence to
14 support its conclusion that these impacts would be less than significant. The EIR is
15 fundamentally flawed.

16 **The EIR Fails to Adequately Analyze the Project’s Consistency with the Orange**
17 **County General Plan and Yorba Linda General Plan Regarding Geologic Hazards.**

18 128. The Project is inconsistent with the Goals and Objectives of the OCGP and YLGP
19 regarding geologic hazards. These plan inconsistencies constitute significant and unavoidable
20 impacts. The EIR concludes that the Project is consistent with these policies regarding geologic
21 hazards, but this conclusion is based on an incomplete and inadequate analysis.

22 129. OCGP Safety Element Goal 1 is to “[p]rovide for a safe living and working
23 environment consistent with available resources.” OCGP Public Safety Objective 1.1 is “[t]o
24 identify natural hazards and determine the relative threat to people and property in Orange
25 County.” The Project is inconsistent with both of these requirements. The Project would not
26 create a safe living environment because it would expose people and structures to the risk of loss,
27 injury or death, involving fault rupture and strong seismic ground shaking.

1 130. The EIR must provide additional information regarding active secondary fault
2 traces to adequately describe the geologic risks facing residents in the Project area. The EIR has
3 not identified the relevant natural hazards or threats until such a report and analysis is completed.
4 The EIR lacks substantial evidence to support its conclusion that the Project is consistent with
5 this objective.

6 131. The Project is inconsistent with OCGP Public Safety Goal 2, to “[m]inimize the
7 effects of natural safety hazards through implementation of appropriate regulations and standards
8 which maximize protection of life and property.” Nor does the Project “create and maintain
9 plans and programs which mitigate the effects of natural hazards,” as required by OCGP
10 Objective 2.1.

11 132. Because the Project exposes residents to significant risks from ground shaking
12 and fault rupture, it is also inconsistent with the YLGP Safety Element Goal 1, to “[p]rotect the
13 community from hazards associated with geologic instability, seismic hazards.” In the absence
14 of a map of the active secondary faults in the Project area, the EIR does not identify the full
15 scope of hazards associated with geologic instability and seismic events, or protect the
16 community from them.

17 133. YLGP Policy 1.1 is to “[r]equire review of soil and geologic conditions to
18 determine stability and relate to development decisions, especially in regard to type of use, size
19 of facility, and ease of evacuation of occupants,” but the Project Applicant has not undertaken
20 the required investigation. The County has not performed a complete “review of soil and
21 geologic conditions” until it has completed the further investigation of active secondary faults.
22 The County does not yet know how this information will change the Project or affect the
23 implementation of relevant safety standards. It therefore cannot accurately evaluate decisions
24 regarding the Project’s “type of use, size of facility, and ease of evacuation of occupants.” Until
25 it completes the geologic analysis that the YLGP requires, the County cannot support the claim
26 that geologic hazards to the Project are less than significant.
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1 134. YLGP Safety Element Policy 1.6 prohibits the location of habitable facilities
2 within an Alquist-Priolo Special Study Zone (“APSSZ”) or within 50 feet of either side of the
3 centerline of an active or potentially active fault. Until it has completed the further investigation
4 of active secondary faults, the EIR lacks substantial evidence to claim that the Project is
5 consistent with this policy.

6 **The EIR Fails to Accurately Analyze the Project’s Wildland Fire Hazards.**

7 135. The EIR fails to adequately analyze the Project’s significant wildland fire hazards.
8 The EIR’s proposed mitigation measures—particularly its unsubstantiated reliance on an
9 untested community evacuation plan with limited emergency egress—do not reduce these
10 significant impacts to a less than significant level. The EIR also fails to acknowledge that the
11 Project is inconsistent with the OCGP and YLGP policies regarding fire hazards. These plan
12 inconsistencies constitute significant and unavoidable impacts.

13 **The Project Would Create Significant Wildland Fire Hazards.**

14 136. The Project site is located in a Very High Fire Hazard Severity Zone as
15 designated by the California Department of Forestry and Fire Protection and has burned regularly.
16 In addition to the Freeway Complex Fire in 2008, it was subject to fires in 1943 and 1980.

17 137. The Project will increase the size of the area’s wildland-urban interface (“WUI”)
18 and locate the WUI directly adjacent to the Project site and 340 residences.

19 138. The Project will result in a significant impact as it will expose people or structures
20 to a significant risk of loss, injury, or death involving wildland fires, including where wildlands
21 are adjacent to urbanized areas or where residences are intermixed with wildlands.

22 139. The EIR’s conclusions that wildland fire risks will be less than significant is not
23 supported by substantial evidence.

24 140. The EIR and Project design do not provide adequate safety zones for firefighters.
25 The EIR does not demonstrate that Project residents will be able to safely evacuate in the event
26 of a wildland fire. The EIR estimates it will take 1.5 to 2.5 hours to evacuate the Project site in
27 the event of fire. However, evidence submitted by POHAH indicates under red flag and Santa
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1 Ana wind driven fire conditions, a fire could reach the Project site from many likely ignition
2 points in just over 21 minutes, providing little time for residents to safely evacuate. The EIR
3 fails to analyze shortages of available emergency personnel to aid and direct evacuation efforts in
4 the event of a wildland fire event. The EIR fails to identify on-site refuge areas and its
5 conclusions regarding on-site refuge are not supported by substantial evidence.

6 141. The EIR indicates that the Project, a residential development located in the WUI,
7 will *reduce* wildland fire risk. Recent and local fire studies indicate increased roadways and
8 residential developments at the WUI increase the wildland fire risk threefold. The EIR indicates
9 that the existing undeveloped Project site provides no fuel modification benefits, and claims that
10 the Project's fuel modification features would reduce the risk of wildland fires in the general
11 vicinity presumably by acting as a buffer to other residential areas. Structures burn at higher
12 intensities than wildland fuels yet the EIR fails to analyze this issue.

13 142. The EIR fails to evaluate the significant impacts of increased risk of fire
14 originating in the Project to the surrounding environment, specifically the adjacent CHSP and its
15 recreational and biological resources.

16 **The EIR Fails to Identify Adequate Mitigation for Wildland Fire Hazards.**

17 143. The EIR fails to ensure that current and future residents of the Project and
18 surrounding developments will be able to safely evacuate the area in the event of a fire
19 emergency. The Project will expose people to a significant risk of injury or death involving
20 wildland fires. The Project's wildland fire hazards remain significant.

21 144. The EIR admits that during the 2008 Freeway Complex Fire, residents
22 experienced gridlock on local and major streets when they attempted to evacuate the area. The
23 Project, combined with other proposed developments nearby, including Cielo Vista, and limited
24 evacuation routes, exacerbates this problem. All vehicles from these Projects will evacuate onto
25 Yorba Linda Boulevard, which was gridlocked during the 2008 Freeway Complex Fire. The EIR
26 fails to analyze cumulative impacts associated with emergency evacuation.
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1 145. Instead of analyzing a community-wide, overall evacuation scenario, the EIR
2 relies on limited project-specific measures that it claims will reduce traffic congestion during
3 community evacuation events. The EIR impermissibly defers preparation of the Project’s
4 Community Evacuation Plan, avoids evaluation of analysis of roadway capacity in the event of
5 an emergency evacuation, and indicates Yorba Linda has not completed its Community
6 Evacuation Plan. The Community Evacuation Plan should properly be part of the EIR, subject to
7 public review and comment and the Project site plan should be integrated and consistent with
8 any evacuation plan.

9 146. The EIR relies on an area evacuation plan prepared by the Orange County
10 Sheriff’s Department designed to move traffic off Yorba Linda Boulevard and through local
11 neighborhoods. The EIR fails to include this plan and does not evaluate its effectiveness.
12 Without this information, the EIR’s conclusion that evacuation can mitigate fire hazards to a less
13 than significant level is unsupported by substantial evidence.

14 147. The EIR fails to provide traffic analysis or modeling to support its evacuation
15 conclusions or to support conclusions that local and state fire and emergency service providers
16 will be able to access the Project during a wildland fire emergency. The EIR fails to provide
17 substantial evidence supporting its conclusion that the street system will provide available
18 capacity to accommodate traffic volumes during a fire emergency. The Project creates risks of
19 injury or death involving wildland fires that remain significant.

20 148. The EIR’s failure to include an effective emergency evacuation plan also
21 threatens the safety of Project and nearby residents in the case of an emergency related to oil
22 production facilities on-site. The EIR does not ensure that current and future residents of the
23 Project and surrounding developments will be able to safely evacuate the area in the event of an
24 emergency related to on-site oil facilities. The EIR provides no traffic analysis or modeling to
25 support any claim that the street system provides available capacity to accommodate traffic
26 volumes during a wildfire evacuation. In fact, the 2008 Freeway Complex Fire proves the road
27 capacity is subpar.
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1 **The EIR Fails to Adequately Analyze Hazardous Emissions from Existing and**
2 **Continuing Oil Drilling Operations.**

3 149. Existing oil drilling operations will continue on the Project site. Hazardous
4 emissions of combustible gas from oil well operations would be significant without mitigation
5 and “create a significant hazard to the public or the environment through reasonably foreseeable
6 upset and accident conditions involving the release of hazardous materials into the environment.”
7 The EIR conclusion that applicable mitigation measures would reduce this hazard to less than
8 significant are not supported by substantial evidence.

9 150. The EIR relies on Mitigation Measures which improperly defer analysis of
10 hazards until post Project approval, including preparation of a Combustible Gas/Methane
11 Assessment Study to assess release of combustible gas/methane, implementation of a Methane
12 Control Plan if a measurable quantity of methane is detected, and preparation of Remedial
13 Action Plan prior to any oil well closure. The EIR has failed to analyze the full range of hazards
14 facing the Project. CEQA requires that impacts be identified before project momentum reduces
15 or eliminates the agency’s flexibility to change its course of action. These measures do not
16 address the risks to Project and nearby residents and the necessity of evacuation of the area in the
17 event of an oil-related emergency.

18 151. These mitigation measures, largely consisting of future studies and analysis, do
19 nothing to prevent a release of combustible gas, or some other oil-related emergency, such as a
20 fire or spill. The EIR provides no traffic analysis or modeling to support any claim that the street
21 system provides available capacity to accommodate traffic volumes during an oil-related
22 emergency. The EIR provides no substantial evidence to support its conclusion that operation of
23 oil facilities would not create a significant hazard to the public or the environment and that a less
24 than significant impact would occur with regard to future oil operations.

25 **The EIR Fails to Adequately Analyze the Project’s Consistency with the Orange**
26 **County General Plan and Yorba Linda General Plan Regarding Public Safety and Fire**
27 **Hazards.**

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1 152. Because the Project would expose current and future residents in the area to a
2 significant risk of injury or death involving wildland fires, the Project is inconsistent with the
3 Goals, Objectives, and Policies of the OCGP and YLGP regarding public safety and fire hazards.
4 These plan inconsistencies constitute significant and unavoidable impacts that the EIR has failed
5 to recognize. The EIR’s consistency conclusions regarding public safety and fire hazards are
6 based on incomplete and inadequate analysis, and not supported by substantial evidence.

7 153. The Project is inconsistent with OCGP Public Services and Facilities Element -
8 Orange County Fire Authority Goal 1, to “[p]rovide a safe living environment ensuring adequate
9 fire protection facilities and resources to prevent and minimize the loss of life and property from
10 structural and wildland fire damages.” The Project is inconsistent with YLGP Safety Element
11 Goal 4, to “[p]rotect people and property from brush fire hazards.”

12 154. The Project is inconsistent with OCGP Public Services and Facilities Element -
13 Orange County Fire Authority Goal 2, to “[m]inimize the effects of natural safety hazards
14 through implementation of appropriate regulations and standards which maximize protection of
15 life and property,” and OCGP Public Services and Facilities Element - Orange County Fire
16 Authority Objective 2.1, “[t]o create and maintain plans and programs which mitigate the effects
17 of public hazards.”

18 155. In the absence of adequate analysis and modeling of traffic and transportation
19 during a fire-related emergency, the EIR has not identified the relevant natural hazards and lacks
20 substantial evidence to support its conclusion that the Project is consistent with OCGP and
21 YLGP policies.

22 **The EIR Fails to Adequately Analyze Greenhouse Gas Emissions and Energy**
23 **Consumption.**

24 156. The EIR fails to adequately analyze the significance of the Project’s greenhouse
25 gas emissions, particularly when analyzed in conjunction with the Cielo Vista project and other
26 reasonably foreseeable projects, and fails to analyze the Project’s consistency within the current
27 regulatory setting concerning greenhouse gas emissions, including the Southern California
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1 Association of Governments’ Sustainable Communities Strategy (“SCS”), the Orange County
2 Council of Governments’ sub-regional SCS, Assembly Bill 32 and Senate Bill 375
3 requirements, and California Air Pollution Control Officers Association (“CAPCOA”), CEQA
4 and Climate Change (2010) white paper.

5 157. The EIR fails to provide appropriate mitigation for greenhouse gas impacts
6 compliant with the current regulatory setting.

7 158. The EIR defers formulation of specific greenhouse gas emissions reduction
8 measures until after Project approval and implementation.

9 159. The Statement of Overriding Considerations for the Project’s greenhouse gas
10 emissions is not supported by substantial evidence. The County failed to adopt all feasible
11 mitigation measures that would reduce the Project’s greenhouse gas emissions. Feasible
12 mitigation measures exist that would reduce the Project’s greenhouse gas emissions and energy
13 consumption.

14 **The EIR Fails to Accurately Analyze the Project’s Recreation Impacts.**

15 160. The EIR fails to adequately analyze the Project’s significant recreation impacts on
16 CHSP. Without further analysis, the EIR cannot claim that these significant impacts are less
17 than significant and such impact conclusions are not supported by substantial evidence.

18 **The EIR Fails to Adequately Analyze the Project’s Impacts on CHSP.**

19 161. There is clear potential for the Project’s impacts on CHSP to exceed CEQA
20 thresholds and a thorough investigation of these environmental impacts is required.

21 162. The Project will increase the use of CHSP such that substantial physical
22 deterioration will occur or be accelerated. CHSP extends over more than 14,000 acres of
23 parkland and provides a wide range of natural landscapes and unique recreational opportunities.
24 The Park provides recreation opportunities that cannot be found in the Project’s on-site parks or
25 open space.

26 163. The Project is designed and contemplated to take advantage of the Park’s
27 adjacency. The Project will create and enhance a network of riding, hiking, and cycling trails “in
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1 order to provide access to the larger wildland areas within CHSP.” One of the Project’s
2 objectives is to “[p]rovide recreational opportunities for residents in the project vicinity for
3 access to CHSP from the south and west to the Old Edison Trail.” This access is inconsistent
4 with the CHSP General Plan and even if implemented provides only private access to the Park by
5 residents of the Project’s gated community. The EIR must assume that, as the Project intends,
6 residents will make significant use of CHSP. The EIR fails to acknowledge that the Project will
7 enhance access to, and thus increase use of, and impact to the Park by Project residents.

8 164. The CHSP General Plan requires the Park to create appropriate pedestrian access
9 points, and to seek the input and cooperation of local jurisdictions to develop this access.
10 Designated access points should satisfy a number of important conditions: they should avoid
11 adverse impacts to sensitive resources and be spaced so that resources and visitor experiences are
12 not adversely affected by overuse of an area; they should minimize effects on significant
13 viewsheds and aesthetic resources, and should be manageable with available park staff and
14 reasonably accessible to park patrol and emergency vehicles. The Project’s proposed access
15 into CHSP will be unauthorized (illegal) per the California Department of Parks and Recreation
16 comment letter.

17 165. Project access to CHSP could lead to overuse of certain areas of the Park, harm
18 sensitive resources, affect viewsheds and aesthetic resources, and require increases in park ranger
19 patrols and maintenance staff. The EIR has failed to analyze these potential impacts.

20 **The EIR Fails to Adequately Analyze the Project’s Traffic and Transportation**
21 **Impacts.**

22 166. The EIR fails to adequately analyze the Project’s traffic and transportation
23 impacts because it fails to include the analysis of transportation system management and demand
24 management for the Project required by the OCGP and YLGP. The EIR also fails to
25 acknowledge that the Project is inconsistent with the policies of the OCGP and YLGP regarding
26 transportation management and alternative transportation. These plan inconsistencies constitute
27 significant and unavoidable impacts.

1 **The EIR Fails to Adequately Analyze the Project’s Consistency with the Orange**
2 **County General Plan and Yorba Linda General Plan Regarding Traffic and**
3 **Transportation.**

4 167. EIR fails to provide the required analysis of transportation system management
5 and demand management for the Project. OCGP Transportation Element Objective 6.7 requires
6 developers of more than 100 dwelling units to submit, as part of their development proposal, a
7 Transportation System Management/Transportation Demand Management plan that “includes
8 strategies, implementation programs and an annual monitoring mechanism to ensure a reduction
9 of single occupant automobile travel associated with development.” The EIR does not include
10 this required plan, which is expressly applicable to all proposed residential developments that
11 include more than 100 dwelling units.

12 168. Due to the failure to prepare this plan, the Project is inconsistent with OCGP Land
13 Use Element Policy 4: “Land Use/Transportation Integration - To plan an integrated land use and
14 transportation system that accommodates travel demand.”

15 169. The Project access roads have residential frontage. The EIR classifies the Project
16 roads as commuter roads, but Orange County Road Standards prohibit residential frontage on a
17 commuter road. With the addition of the Project, average daily trips on local roads will exceed
18 Orange County Public Works Standard Plan 1107.

19 170. The YLGP requires analysis of transportation system management and demand
20 management for the Project. With the addition of the Project, average daily trips on local roads
21 will also exceed YLGP Standards. YLGP Circulation Element Goal 3 is to “[m]aximize the
22 efficiency of the City’s circulation system through the use of transportation system management
23 and demand management strategies.” YLGP Circulation Element Policy 3.7 requires “that new
24 developments provide Transportation Demand Management Plans, with mitigation monitoring
25 and enforcement plans, as part of required Traffic Studies, and as a standard requirement for
26 development processing.” The EIR fails to provide this analysis, and without it, the Project is
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1 inconsistent with these YLGP requirements, and its consistency conclusions unsupported by
2 substantial evidence.

3 **The EIR Fails to Provide Mitigation For the Project’s Significant Noise Impacts.**

4 171. The EIR fails to mitigate the significant impacts related to Project’s substantial
5 increase in traffic-related noise and uses inconsistent significance thresholds in analyzing
6 impacts. The EIR acknowledges that CEQA Appendix G provides three appropriate standards
7 by which to judge the significance of noise impacts from the Project:

8 Would the project result in exposure of persons to or generation of noise levels in excess of
9 standards established in the local general plan or noise ordinance, or applicable standards of
10 other agencies?

11 Would the project result in a substantial permanent increase in ambient noise levels in the
12 project vicinity above levels existing without the project?

13 Would the project result in a substantial temporary or periodic increase in ambient noise
14 levels in the project vicinity above levels existing without the project?

15 172. The EIR later uses a different significance threshold and indicates that the Project
16 would result in a significant noise impact only if the Project generates a noise level increase of
17 greater than 3.0 dBA *and* the noise level exceeds the 65 dBA CNEL limit in the Orange County
18 Noise Ordinance.

19 173. The EIR then reverts to using the appropriate, separate thresholds of significance
20 found in CEQA Guidelines Appendix G. The EIR concludes that many of the Project’s noise
21 impacts would exceed one of the three relevant significance thresholds. The Project would cause
22 a *substantial* noise increase from Project-related traffic on Aspen Way and Stonehaven Drive
23 under Project Option 2 for both existing and future time periods. “This increase is a significant
24 impact based on CEQA thresholds, because a 3 dBA increase is a perceptible increase in noise
25 levels.”

26 174. CEQA requires the County to describe feasible mitigation measures that can
27 minimize the project’s significant environmental effects. CEQA Guidelines § 15121(a),
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1 15126.4(a). The EIR acknowledges but fails to mitigate the Project’s significant noise impacts,
2 determining instead that these impacts are significant and unavoidable and that “[t]here are no
3 feasible mitigation measures, such as sound walls, to reduce the 3 dBA perceptible increase in
4 noise, because such walls are not typically used in residential neighborhoods.”

5 175. “‘Feasible’ means capable of being accomplished in a successful manner within a
6 reasonable period of time, taking into account economic, environmental, legal, social, and
7 technological factors.” CEQA Guidelines § 15364. The “typicalness” of a proposed measure is
8 not a feasibility factor. The EIR is deficient in failing to consider implementing mitigation for
9 the Project’s significant noise impacts, including sound walls, used in other nearby areas to
10 provide noise attenuation in residential areas.

11 176. The EIR also fails to analyze, mitigate or avoid Project inconsistencies with the
12 Noise standards in the YLMC (see YLMC Chapter 8.32).

13 177. The EIR indicates that the combined substantial noise increases from the Project
14 and Cielo Vista will be cumulatively considerable and significant impacts. Nonetheless, the EIR
15 fails to propose mitigation for these significant impacts. CEQA requires the County to examine
16 options for avoiding or mitigating the Project’s contribution to significant cumulative impacts.
17 CEQA Guidelines § 15139(b)(3); *Fort Mojave Indian Tribe v. Dep’t of Health Servs.*, 38 Cal.
18 App. 4th 1574, 1603 (1995). The EIR must provide this analysis or it will remain legally
19 inadequate.

20 178. The Statement of Overriding Considerations for the Project’s noise impacts is not
21 supported by substantial evidence. The County failed to adopt all feasible mitigation measures
22 that would reduce the Project’s noise impacts.

23 **The EIR Fails to Accurately Analyze the Project’s Consistency with the Orange**
24 **County General Plan, the Yorba Linda General Plan, Yorba Linda Zoning Code, and**
25 **CHSP General Plan.**
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1 179. The Project is inconsistent with applicable goals, objectives, and policies of the
2 OCGP, YLGP, Yorba Linda Zoning Code, and CHSP General Plan regarding aesthetics,
3 geologic hazards, public safety, fire hazards, noise, recreation, and traffic and transportation.

4 180. The Project would result in significant, unmitigated physical impacts on the
5 environment. Significant impacts due to inconsistencies with applicable land use plans and
6 policies have not been properly analyzed and avoided or mitigated.

7 **The EIR Violates CEQA Because the Project Is Inconsistent with the Orange**
8 **County General Plan, Yorba Linda General Plan, Yorba Linda Zoning Code, and CHSP**
9 **General Plan and Would Result in Significant Physical Impacts on the Environment.**

10 181. The Project will have a significant impact if it conflicts with applicable land use
11 plans, policies, or regulations of an agency with jurisdiction over the project adopted for the
12 purpose of avoiding or mitigating an environmental effect. The EIR’s conclusion that the Project
13 “does not conflict with any applicable land use policy or regulation of any agency with
14 jurisdiction over the project” is not supported by substantial evidence.

15 182. The Project is inconsistent with applicable OCGP, YLGP, Yorba Linda Zoning
16 Code, and CHSP General Plan goals, objectives, and policies regarding aesthetics, geologic
17 hazards, public safety, fire hazards, noise, recreations, and traffic and transportation. The
18 impacts in these substantive categories remain significant despite the EIR’s proposed mitigation
19 measures.

20 183. The Project is located within the City of Yorba Linda Sphere of Influence.

21 184. The EIR seeks “to provide complete and adequate CEQA coverage for all actions
22 and approvals associated with ultimate development of the Proposed Project, including but not
23 limited to . . . [a]nticipated possible future annexation to City of Yorba Linda.” The YLGP is
24 an applicable land use plan, and the EIR must evaluate the Project’s consistency with the plan.

25 185. The Project conflicts with applicable land use plans and policies adopted for the
26 purpose of avoiding or mitigating an environmental effect. The Project’s inconsistency with the
27 General Plans is itself a significant impact that must be avoided or mitigated and if not mitigated,
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1 constitutes an unavoidable impact. *See* Pub. Res. Code § 21100(b)(2)(A); CEQA Guidelines §
2 15126(b) (describing consequences of significant and unavoidable impacts).

3 **The EIR Fails to Adequately Analyze Cumulative Impacts.**

4 186. The EIR lists other projects but fails to reasonably analyze the impacts of 17 other
5 identified projects in the cumulative impacts discussion. Projects appear under a variety of
6 different names, undermining the informational and analytical value of the cumulative impacts
7 analysis.

8 187. The EIR includes an unduly restrictive geographic range of projects within only
9 two miles of the Project and fails to include pending projects in the nearby cities of Brea and
10 Chino Hills, particularly those impacting CHSP.

11 **The EIR Fails to Adequately Analyze Growth-Inducing Impacts of the Project.**

12 188. CEQA requires an EIR to include a “detailed statement” setting forth the growth-
13 inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); CEQA Guidelines §
14 15126.2(d); *City of Antioch v. City Council of Pittsburg*, 187 Cal. App. 3d 1325, 1337 (1986).

15 189. The statement must “[d]iscuss the ways in which the proposed project could foster
16 economic or population growth, or the construction of additional housing, either directly or
17 indirectly, in the surrounding environment.” CEQA Guidelines § 15126.2(d). This includes the
18 project’s ability to “remove obstacles to population growth.” CEQA Guidelines § 15126.2(d).
19 The statement must also discuss how projects “may encourage and facilitate other activities that
20 could significantly affect the environment, either individually or cumulatively.” *Id.*

21 190. The Project will foster economic and population growth and the construction of
22 additional housing both directly and indirectly by extending water and road infrastructure into an
23 undeveloped, unserved area.

24 191. The EIR acknowledges the probability of development on the adjacent Bridal
25 Hills property (“a reasonably foreseeable development”) and development of the adjacent Yorba
26 Linda Land LLC is likewise probable.

1 192. Access to the Bridal Hills and Yorba Linda Land LLC parcels will be provided
2 through Cielo Vista and the Project. Development of these two parcels will utilize infrastructure
3 improvements, such as water treatment and delivery facilities, that are planned to accommodate
4 Cielo Vista and the Project. These types of infrastructure improvements are by definition growth
5 inducing (*see* CEQA Guidelines § 15126.2(d)), are part of the projects and the projects are not
6 possible without these improvements.

7 193. The EIR fails to adequately analyze the extent or environmental impacts of such
8 growth-inducing impacts.

9 194. The EIR avoids analysis of the growth inducing impacts of the extension of roads
10 and infrastructure on the Project site as directly facilitating growth and development in these
11 adjacent, undeveloped areas.

12 195. CEQA requires that the EIR analyze the additional population growth, new
13 residential units, and other development that the Project would facilitate on the Bridal Hills and
14 Yorba Linda Land LLC parcels, as well as any other nearby development areas. The EIR should
15 identify the location and intensity of any such new development, and the environmental impacts
16 resulting from that development.

17 196. The EIR here does not meet these CEQA requirements in analyzing the growth-
18 inducing impacts of the Project.

19 **The EIR’s Analysis of Project Alternatives is Inadequate.**

20 197. The EIR fails to include a legally sufficient study of alternatives to the Project.
21 CEQA provides that “public agencies should not approve projects as proposed if there are
22 feasible alternatives . . . which would substantially lessen the significant environmental effects of
23 such projects.” Pub. Res. Code § 21002.

24 198. An EIR must consider a “reasonable range” of alternatives “that will foster
25 informed decision making and public participation.” CEQA Guidelines § 15126.6(a). “An EIR
26 which does not produce adequate information regarding alternatives cannot achieve the dual
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1 purpose served by the EIR” *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App.
2 3d 692, 733 (1990).

3 199. The EIR fails to provide a reasonable range of alternatives. It analyzes only one
4 meaningful alternative—a Lower/Reduced Density Alternative—in addition to the No Project
5 Alternative.

6 **The EIR’s Failure to Adequately Describe the Project and Analyze Project Impacts**
7 **Results in an Inadequate Range of Alternatives.**

8 200. The EIR’s failure to disclose the severity of the Project’s wide-ranging impacts or
9 to accurately describe the Project, particularly in relation to CHSP, distorts the document’s
10 analysis of Project alternatives. The alternatives are evaluated against an inaccurate and
11 incomplete representation of the Project’s impacts.

12 201. The EIR’s failure to adequately describe the Project and its impacts necessitates
13 consideration of additional alternatives. A reasonable range of alternatives includes alternatives
14 that do not provide access to the Bridal Hills or Yorba Linda Land LLC parcels or that provide
15 for comprehensive planning of the Murdock Properties as envisioned by the YLGP. The EIR
16 must be revised to analyze such alternatives.

17 202. Without sufficient analysis of the underlying environmental impacts of the Project
18 and its likely future components, the EIR’s comparison of this Project to the identified
19 alternatives fails to fulfill CEQA requirements and is unsupported by substantial evidence.

20 **The EIR’s Range of Alternatives Is Not Reasonable Because the Alternatives Fail to**
21 **Reduce the Project’s Significant Impacts.**

22 203. None of the alternatives analyzed in the EIR reduce a majority of the Project’s
23 significant environmental impacts. In addition to the No Project Alternative, the EIR offers only
24 one meaningful alternative: the Lower/Reduced Density Alternative. This one alternative alone
25 does not constitute the “reasonable range” of alternatives that CEQA requires.
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1 204. Access Alternatives Option 2A and 2B are not true project alternatives, focus only
2 on access and not on other impact producing Project components, and have environmental
3 impacts similar to, or even greater than, those of the Project.

4 205. The Lower/Reduced Density Alternative results in *greater* impacts than the
5 Project in some fundamental impact categories, including recreation and wildland fire hazards.
6 The Lower/Reduced Density Alternative results in impacts that are similar to the Project’s air
7 quality, cultural resources, greenhouse gas emissions, and hydrology impacts.

8 206. The Yorba Linda General Plan (“YLGP”) Alternative is not a meaningful
9 alternative. It fails to offer substantial environmental advantages over the proposed Project and
10 fails to analyze the Project in conjunction with key provisions of the YLGP concerning the
11 Murdock Properties. As framed, when compared to the proposed Project, this alternative
12 *increases* impacts related to air quality, biological resources, noise, public services, recreation,
13 traffic, and utilities.

14 207. The EIR fails to include a reasonable range of alternatives and alternatives share
15 but do not reduce or avoid the Project’s environmental impacts. The EIR indicates the
16 Lower/Reduced Density Alternative is the environmentally superior alternative, but this option
17 still yields similar or greater impacts in many impact key issue areas, including fire hazards and
18 recreation.

19 **The EIR Should Have Included Other Feasible Alternatives.**

20 208. The EIR’s analysis of alternatives is inadequate, and necessitates development of
21 additional alternatives for the Project, including alternatives which reduce or eliminate the bulk
22 of the Project’s significant environmental impacts.

23 209. The EIR should identify and evaluate an off-site alternative, an alternative that
24 does not include access across the Cielo Vista property, a YLGP Alternative that analyzes the
25 Project in conjunction with YLGP provisions relating to comprehensive planning of the Murdock
26 Properties.
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1 210. The EIR relies on narrow project objectives to dismiss consideration of other
2 alternatives.

3 211. The EIR may not define the Project’s objectives so narrowly as to preclude a
4 reasonable alternatives analysis. The range of alternatives should include alternatives that meet
5 most of the project’s objectives but have a reduced level of environmental impacts; they should
6 not include alternatives that meet few of the project’s objectives so that they can be easily and
7 readily eliminated.

8 212. The Project objectives listed in the EIR violate this core CEQA principle and
9 specify criteria that are essentially unique to the Project site. The EIR ensures that only a limited
10 range of on-site alternatives could possibly satisfy all Project objectives.

11 **The EIR Must Evaluate An Alternative Without Access Across Cielo Vista.**

12 213. Petitioner is informed and believes and thereon alleges that the Project Applicant
13 may not be able to secure access across the Cielo Vista property or the Yorba Linda publicly
14 owned open space and parkland. The EIR must evaluate an alternative that provides access to
15 the Project across different properties. Every remaining Project Option and Alternative, except
16 the No Project Alternative, rely on primary, secondary, or emergency access routes that cross the
17 Cielo Vista property. The Access alternative preferred by Yorba Linda requires access across
18 city-owned open space and parkland. These routes all require the Project to secure easements
19 across Cielo Vista and city-owned land.

20 214. The Project Applicant may be unable to secure the necessary easements to permit
21 access to the Project. The Project will require construction of an access route that has not yet
22 been designed, identified or analyzed. This currently-unknown access route could have
23 significant impacts that have not been evaluated. The EIR must include an alternative that
24 accounts for these possible future circumstances.

25 **The EIR Fails to Provide Adequate Responses to Public Comments.**

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1 215. When a significant environmental issue is raised in public comments that object to
2 a draft EIR's analysis, the agency response must be detailed and must provide a reasoned, good
3 faith analysis.

4 216. The requirement of a detailed written response to comments helps to ensure that
5 the Lead Agency will fully consider the environmental consequences of a decision before it is
6 made, that the decision is well informed and open to public scrutiny, and that the public
7 participation in the environmental review process is meaningful.

8 217. Conclusory statements unsupported by specific references to empirical
9 information, scientific authorities, or explanatory information are insufficient as responses to
10 comments. 14 Cal. Code Regs. § 15088(c).

11 218. The EIR's responses to comments fail to provide the reasoned, good faith analysis
12 required by CEQA, contain conclusory, unsubstantiated statements and fundamentally fail to
13 serve the informational purposes outlined in CEQA guidelines and case law.

14 **The EIR Fails to Adequately Analyze Water Supply Availability Issues.**

15 219. The EIR failed to examine significant, new information concerning drought
16 conditions in the State and continued availability of water resources for the Project. The EIR
17 failed to consider the combined water requirements of the Project and the Cielo Vista project and
18 water availability for these projects under these drought conditions.

19 220. The Yorba Linda Water District has agreed to meet water reduction standards of
20 159 gallons per person per day by 2015 and 141 gallons per person per day by 2020. Current use
21 for water district users is 220 gallons per person per day. The Project estimates using 334 gallons
22 per person per day, almost 200 gallons more per person per day than 2020 use standards.

23 221. The Yorba Linda Water District is under a 36% mandatory water reduction due to
24 the historic drought. The District requested an exemption from State mandated water use
25 reductions due to the need to protect homes in high fire hazard severity zones. The State denied
26 the Water District's request for an exemption and instead increased their water cutback
27 percentage.
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1 222. The EIR failed to adequately analyze water availability including availability of:
2 necessary water for dust abatement during construction and grading (contemplated to last two
3 years); necessary water for irrigation of fuel modification zones; necessary water for irrigated
4 slopes and interior parks; and necessary water for the proposed habitat mitigation.

5 223. The EIR’s conclusions regarding the availability of water supplies for the Project
6 are not supported by substantial evidence.

7 **Recirculation Is Required Due to the Addition of Significant, New Information.**

8 224. Recirculation of an EIR is required under CEQA when “significant new
9 information” is added to a Draft EIR. Furthermore, the EIR cannot be changed in a way that
10 deprives the public of a meaningful opportunity to comment on an adverse environmental effect
11 of the project or a feasible way to avoid or to mitigate such an effect. 14 Cal. Code Regs. §
12 15088.5.

13 225. The EIR omitted material, critical information concerning both the location and
14 total acreage of CHSP in relation to the Project. This failure is comprehensive and pervasive
15 throughout the Draft EIR and its exhibits. The Draft EIR understated the size of CHSP by 2,330
16 acres and omitted this additional acreage from numerous EIR exhibits and the project impact
17 analysis. This omission in EIR exhibits made it appear that the impacts to the Park, which
18 shared a border to the north, east and south of the Project site, were less than significant. In
19 reality, the northern portion of the Project site is a veritable island surrounded by CHSP which
20 abuts and surrounds the entire northern and eastern portions of the Project site.

21 226. This omission renders the EIR’s analysis of the Project’s edge effects, wildland-
22 urban interface, and Project impacts to aesthetics, biology, and hazards and mitigation for such
23 impacts inadequate.

24 227. After this omission and error were brought to County’s attention by Petitioners
25 and even after Petitioners provided the digital mapping data to allow for the correction, the Final
26 EIR changed the acreage figures of CHSP to accurately reflect acreage, but did not correct the
27 numerous incorrect EIR exhibits and did not conduct impact analysis reflecting the true location
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1 and acreage of CHSP in relation to the Project. The EIR's analysis of Project impacts to CHSP
2 remains inadequate.

3 228. The addition of significant new information and omission of information
4 concerning CHSP requires correction of the multiple errors and omissions in the EIR concerning
5 the acreage and location of CHSP and analysis of impacts of the project on CHSP in these areas.
6 Recirculation of the EIR is required so the public and Responsible and Trustee Agencies may
7 evaluate this new information and the validity of conclusions drawn from it.

8 **CEQA Findings Are Not Supported By Substantial Evidence.**

9 229. No substantial evidence supports the County's findings adopted pursuant to
10 CEQA, including the findings that the Project's impacts have been mitigated to less than
11 significant levels.

12 **Statement of Overriding Considerations Is Not Supported By Substantial Evidence.**

13 230. Where no feasible mitigation measures or alternatives are available to avoid or
14 reduce a project's significant environmental effects, CEQA allows an agency approving a project
15 to adopt a Statement of Overriding Considerations that describes how specific overriding
16 economic, legal, social, technological, or other benefits outweigh the significant environmental
17 effects.

18 231. In approving the Project and certifying the EIR, the Board concluded that the
19 Project would result in significant unavoidable Greenhouse Gas, Noise and
20 Traffic/Transportation impacts. Accordingly, the Board adopted a Statement of Overriding
21 Considerations, including findings that specific considerations make infeasible the mitigation
22 measures or alternatives identified in the EIR for the Project's unavoidable significant impacts
23 and that economic, social, and other factors justify approval of the Project despite these
24 unavoidable significant impacts.

25 232. The County's adoption of a Statement of Overriding Considerations that
26 purportedly justifies the Project's significant adverse impacts on the environment is not
27 supported by substantial evidence and represents a failure to proceed in the manner required by
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1 law. Similarly, the finding that no feasible alternatives of mitigation measures exist to eliminate
2 or reduce the remaining significant effects is not supported by substantial evidence.

3
4 **SECOND CAUSE OF ACTION**
5 **Violation of California Planning and Zoning Law (Government Code § 65000 et seq.)**
6 **(By All Petitioners Against Respondents County and Board)**

7 233. Petitioners hereby incorporate by reference each and every allegation set forth
8 above.

9 234. Under the California Planning and Zoning Law, the County General Plan is a
10 fundamental land use planning document, superior to all other land use plans and serving as the
11 constitution or blueprint for all future development within the County. The General Plan
12 consists, among other things, of a set of countywide goals and policies. All development and
13 land use actions, including the approval of the Project entitlements, must conform to or be
14 consistent with the General Plan, a requirement known as “vertical consistency.”

15 235. To effectively guide development, state law requires that general plans must
16 “comprise an integrated, internally consistent and compatible statement of policies” Gov.
17 Code § 65300.5. All subordinate land use decisions, including specific plans, must be consistent
18 with the general plan. The “consistency doctrine” has been described as “the linchpin of
19 California’s land use and development laws” and “the principle which infuses[s] the concept of
20 planned growth with the force of law.” *Napa Citizens for Honest Government v. Napa County*
(2001) 91 Cal. App. 4th 342, 355.

21 236. A project cannot be found consistent with a general plan if it conflicts with a plan
22 policy that is fundamental, mandatory, and clear, regardless of whether the project is consistent
23 with other general plan policies. Even in the absence of a direct conflict, a local agency may not
24 approve a development project if it conflicts with the general plan’s policies and objectives.
25 Amendments to the General Plan must also maintain its internal consistency. Gov. Code §
26 65300.5.

1 237. The Project violates these state law requirements because it conflicts with and
2 frustrates clear policies within the OCGP regarding public safety, fire hazards, geologic hazards,
3 transportation, and aesthetics.

4 238. The Project conflicts with clear, fundamental general plan directives regarding
5 public safety. OCGP Public Safety Goal 1 is to “[p]rovide for a safe living and working
6 environment consistent with available resources.” OCGP Public Safety Objective 1.1 is “[t]o
7 identify natural hazards and determine the relative threat to people and property in Orange
8 County.” OCGP Public Safety Goal 2, is to “[m]inimize the effects of natural safety hazards
9 through implementation of appropriate regulations and standards which maximize protection of
10 life and property.” These core principles of the County’s General Plan articulate the County’s
11 fundamental duty to promote the safety of its residents during the land use planning process.

12 239. The Project is inconsistent with OCGP goals and objectives regarding public
13 safety and fire hazards. OCGP Public Services and Facilities Element - Orange County Fire
14 Authority Goal 1 requires the County to ensure adequate fire protection facilities to prevent and
15 minimize the loss of life and property from structural and wildland fire damages. OCGP Public
16 Services and Facilities Element - Orange County Fire Authority Goal 2 and Objective 2.1 require
17 the County to minimize natural safety hazards and mitigate the effects of those hazards.

18 240. The Project is inconsistent with OCGP objectives regarding transportation system
19 management and demand management. OCGP Transportation Element Objective 6.7 requires
20 the Project Applicant to analyze transportation system management and demand management for
21 the Project. The EIR fails to provide this analysis.

22 241. The Project conflicts with clear, fundamental general plan directives regarding
23 aesthetics. OCGP Land Use Element Policy 8 requires the County “[t]o guide development so
24 that the quality of the physical environment is enhanced.” Resources Element, Natural
25 Resources Policy 5 requires the County “[t]o protect the unique variety of significant landforms
26 in Orange County through environmental review procedures and community and corridor
27 planning activities.” These OCGP policies are particularly important in the unincorporated areas
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1 surrounding the Project site, where undeveloped, rolling hillsides are the defining landform and
2 contribute significantly to the area's aesthetic character.

3 242. County's General Plan includes strong, mandatory policies regarding public
4 safety, fire hazards, geologic hazards, transportation, and aesthetics but these policies are only
5 effective if they are observed. As approved, the Project, the General Plan Amendment and the
6 Specific Plan are inconsistent with numerous General Plan policies.

7
8 **THIRD CAUSE OF ACTION**
9 **Violation of CEQA (Public Resources Code § 21000 et seq.)**
10 **(By All Petitioners Against Respondents Yorba Linda and City Council)**

11 243. Petitioners hereby incorporate by reference each and every allegation set forth
12 above.

13 244. Under CEQA, a Responsible Agency must consider the EIR prepared by the Lead
14 Agency and reach its own conclusions on whether and how to approve the project. Following
15 the Lead Agency's certification of an EIR, a Responsible Agency must separately determine
16 whether the EIR is adequate prior to implementation of the project.

17 245. A Responsible Agency must mitigate or avoid the direct and indirect effects of
18 those parts of a project that it decides to carry out, finance, or approve. A Responsible Agency
19 shall not approve the project as proposed if the agency finds any feasible alternative or feasible
20 mitigation measures within its powers that would substantially lessen or avoid any of the
21 project's significant environmental effects.

22 246. If after the Lead Agency's certification of the EIR, a Responsible Agency
23 receives new information showing that there are new impacts or more severe impacts than shown
24 in the EIR, it must prepare a supplemental or subsequent EIR prior to approving the project.

25 247. By choosing Access Option 2B as the city-preferred access option, Yorba Linda
26 seeks to effectively delete mitigation required in connection with a previous development
27 approval. Yorba Linda approved the Warmington Homes' Dominquez Ranch development in
28 1977. As part of the Condition of Approval (#99) for said development, the land Option 2B
proposes to use was set aside in perpetuity as both open space and parkland. Further, when

1 homebuyers purchased homes in the development the general disclosures state these same lands
2 are to remain “within the allowable uses of the designated open space zone.” When an agency
3 seeks to delete mitigation from a project, it must provide a statement of a legitimate reason and
4 substantial evidence to support the deletion. *Napa Citizens for Honest Gov’t v. Napa County Bd.*
5 *Of Supervisors* (2001) 91 Cal.App.4th 342, 590-591 (“Napa”). A mitigation measure cannot be
6 deleted without a showing that it is infeasible. *Id.* See also *Katzeff v. California Dept. of*
7 *Forestry and Fire Prot.* (2010) 181 Cal.App.4th 601, 614; and *Sierra Club v. County of San*
8 *Diego* (2014) 231 Cal.App.4th 1152, 1174.

9 248. Elimination of mitigation measures from an approved project requires a showing
10 of infeasibility of the measure, and the showing must be made by way of supplemental EIR.
11 *Lincoln Place Tenants Assoc. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491.

12 249. As a Responsible Agency for the Project, Yorba Linda violated CEQA by failing
13 to fulfill its statutory duties as a Responsible Agency prior to implementation of the Project, by
14 failing to reach its own conclusions regarding the adequacy of the EIR and whether to approve or
15 reject the Project, by failing to adopt feasible mitigation measures or alternatives within its
16 powers, and by failing to prepare a subsequent or supplemental EIR prior to implementing
17 Access Option 2B.

18 **FOURTH CAUSE OF ACTION**
19 **Declaratory Relief**
20 **(By All Petitioners Against Respondents Yorba Linda and City Council)**

21 250. Petitioners hereby incorporate by reference each and every allegation set forth
22 above.

23 251. An actual and justifiable controversy now exists between Petitioners/Plaintiffs
24 and Respondent/Defendant Yorba Linda concerning their respective rights, duties and
25 obligations relating to Yorba Linda’s compliance with: (1) Yorba Linda’s duties as a
26 Responsible Agency under CEQA; (2) Measure B, the Citizens’ Right to Vote Amendment,
27 Yorba Linda Municipal Code § 18.01.020 et seq.; (3) California Municipal Park Abandonment
28

1 Law, Gov. Code § 38501 et seq.; and (4) California Law re: Surplus Land, Gov. Code § 54220.

2 252. Petitioners/Plaintiffs are informed and believe and thereon allege that Yorba
3 Linda denies any duty or obligation to comply with: (1) its statutory duties under CEQA; (2)
4 Yorba Linda Municipal Code § 18.01.020 et seq.; (3) California Municipal Park Abandonment
5 Law, Gov. Code § 38501 et seq.; or (4) California Law re: Surplus Land, Gov. Code § 54220.

6 253. Petitioners/Plaintiffs contest Yorba Linda's assertions and contend that
7 implementation of Access Option 2B through publicly owned open space requires compliance
8 with (1) CEQA, including compliance with provisions and procedures regarding responsible
9 agencies, preparation of supplemental or subsequent EIRs, and deletion of previously required
10 mitigation; (2) Yorba Linda Municipal Code § 18.01.020 et seq.; (3) California Municipal Park
11 Abandonment Law, Gov. Code § 38501 et seq.; and (4) California Law re: Surplus Land, Gov.
12 Code § 54220.

13 254. Petitioners/Plaintiffs desire a judicial determination and declaration of Yorba
14 Linda's duties and obligations under these state and local laws.

15 255. A judicial determination and declaration under Code of Civil Procedure § 1060 is
16 appropriate and necessary at this time in order that the parties may ascertain their respective
17 rights and duties toward each other and concerning the Project and Project access.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioners pray for relief as follows:

- 21 1. For alternative and peremptory writs of mandate, commanding
22 Respondent County:
23 (A) to vacate and set aside approval of the Project and all related approvals;
24 (B) to vacate and set aside certification of the Final EIR for the Project;
25 (C) to vacate and set aside approval of the General Plan Amendment, Zone Change
26 and Specific Plan for Esperanza Hills – Project No. PA120037;
27 (D) to prepare and certify a legally adequate EIR for the Project;
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(E) to suspend any and all activity pursuant to Respondent’s approval of the Project, that will prejudice the consideration or implementation of particular mitigation measures or alternatives, until Respondent has complied with all requirements of the California Environmental Quality Act and all other applicable state and local laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public Resources Code § 21168.9.

2. For alternative and peremptory writs of mandate, commanding Respondent Yorba Linda:

(A) to fulfill its duties as a Responsible Agency, including preparation and certification of a legally adequate subsequent or supplemental EIR for the Project;

(B) to suspend any and all activity pursuant to Respondent’s implementation or approval of the Project, that will prejudice the consideration or implementation of particular mitigation measures or alternatives, until Yorba Linda has complied with all requirements of the California Environmental Quality Act and all other applicable state and local laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public Resources Code § 21168.9.

3. For a stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by Respondents or Real Parties in Interest pursuant to Respondents’ approval or implementation of the Project and certification and/or adoption of the EIR for the Project until Respondents have fully complied with all requirements of the California Environmental Quality Act, the California Planning and Zoning Law, and all other applicable state and local laws, policies, ordinances, and regulations;

4. For a declaration that the Project is inconsistent with the requirements of the California Environmental Quality Act and the California Planning and Zoning Law;

5. For a declaration that Respondent Yorba Linda must comply with procedures outlined in: Yorba Linda Municipal Code § 18.01.020 et seq.; California Municipal Park Abandonment Law, Gov. Code § 38501 et seq.; and (4) California Law re: Surplus Land, Gov. Code § 54220.

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- 6. For costs of the suit;
- 7. For attorney's fees pursuant to the Code of Civil Procedure § 1021.5; and
- 8. For such other and further relief as the Court deems just and proper.

DATED: July __, 2015

Kevin K. Johnson
Jeanne L. MacKinnon
KEVIN K. JOHNSON APLC

By: _____
Kevin K. Johnson
Attorneys for Petitioners and Plaintiffs